

DHARMA'S SHIELD: UNRAVELING MAINTENANCE RIGHTS UNDER HINDU LAW

Nirmala Yadav

Assistant Professor, Modi Law College, Kota, Rajasthan

ABSTRACT

This document addresses the maintenance of a woman under the Hindu Marriage Act. The principle of maintenance is to restore the wife to her previous state of comfort and lifestyle as it existed throughout the marriage. The husband is not obligated to pay a predetermined amount of maintenance to his wife; rather, it is at the discretion of a family court to determine the maintenance amount, which may be disbursed monthly or as a lump sum. Maintenance for a woman is a complex matter under the Hindu Marriage Act. It is frequently said as a method to exploit the husband by seeking lifelong alimony. Section 24 of the Hindu Marriage Act, 1955 stipulates that any spouse may seek maintenance pendent lite, which refers to financial support during the ongoing proceedings. Additionally, Section 25 of the Act delineates the criteria for permanent alimony. Maintenance to a wife denotes the financial support that a husband is obligated to provide under specific conditions. The obligation to pay maintenance may arise either during the marriage or following its dissolution. The primary characteristic of maintenance is that the individual depending on it lacks an independent source of income for self-sustenance. No Indian matrimonial statutes, with the exception of the Divorce Act, specify the quantum of maintenance or the expenditures of the proceedings.

Keyword: Maintenance, alimony, spouse, grounds, discretion, permanent

1. INTRODUCTION

The entitlement to support and care is referred to as maintenance. Hindu law accords particular emphasis to the issue of upkeep. India has multiple laws that acknowledge the right to maintenance claims. It can be contended that maintenance is an individual's personal obligation in nurturing a family, ensuring the welfare and support of its members. The individuals would include the husband, children, and aging parents. It also encompasses members who are ineligible to inherit due to their disability.

The right to maintenance includes the provision of essential needs such as clothing, sustenance, and shelter. Dharamshastra delineates two groups of individuals entitled to maintenance: those subject to a general responsibility and those bound by a specific duty.

Moreover, despite the existence of specified maintenance regulations, many situations lack any such stipulations. These circumstances illustrate deficiencies in the existing maintenance legislation, resulting in detriment to the aggrieved party.

2. MEANING OF MAINTENANCE

The English word "maintenance" derives from the French term "maintenir," which translates as "a hand to hold on." The French terms "main" and "tenir" correspond to "manus" and "tenere" in Latin, respectively, and both signify "a support or assistance."

It is apparent that many nations globally utilize distinct legal terminology in diverse settings. "Alimony" denotes financial support provided between spouses, "child support" pertains to payments made by parents to their offspring, and "filial support law" relates to financial assistance given to impoverished parents by their adult children. Similarly, several countries characterize "maintenance" as encompassing all rules arising from familial relationships or, alternatively, governed by a state's marriage legislation.

In Indian marriage law, "maintenance" and "alimony" are sometimes used synonymously. Consequently, maintenance and alimony are equivalent in India. Maintenance encompasses familial agreements, including child support, spousal support, and elder support, intended to assist individuals reliant on others for their daily

necessities. Providing support to these persons is ethically justified and arises from a commitment to safeguarding social security and ensuring equal measures against poverty for all.

3. CONCEPT OF MAINTENANCE

The principle of maintenance was established to guarantee that if one spouse lacks financial independence, the other spouse must provide support to facilitate a viable and autonomous existence for the dependent spouse. Providing maintenance involves enabling the recipient to maintain their pre-marital standard of living in the case of a divorce, and permitting the recipient spouse to sustain their lifestyle prior to separation when maintenance is sought by one partner throughout their period of non-cohabitation. Maintenance refers to the financial support a husband is obligated to provide to his wife during their marriage or, in specific circumstances, following separation or divorce.

In India, personal laws and Section 125 of the Code of Criminal Procedure, 1973 {S. 144 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred as BNSS, 2023)}, pertain to the notion of "maintenance." This principle is also based on Article 15(3) of the Indian Constitution, which is reiterated in Article 39. They ensure gender equality in protection and implement protective discrimination in favor of vulnerable, abandoned, or divorced women, among other groups. They attempt to mitigate hunger and begging in relation to criminal activity.¹

4. MAINTENANCE IN SOCIALISTIC POINT OF VIEW

The ramifications of socialism are vital to society as they enhance the notion of social justice, ensuring equality, liberty, and dignity for all individuals. Justice suppresses the detrimental influence of modernism, driven by egotism and individualistic self-indulgence. While it is officially classified as a right in personam, the sustenance of individuals is a right from a humanitarian standpoint. Failure to meet the maintenance commitment invariably results in the victim experiencing profound distress, inciting significant resentment against the negligent party. The violent eruption of the famished and forsaken towards the unyielding demon is characterized as

a victimized servile mentality that exacerbates legal retribution against living fossils. The law establishes harmony by resolving problems. The elimination of a detrimental environment exacerbating the circumstances of individuals requiring maintenance amplifies sympathy towards administrative ineptitude and apathy. Strategic roadmaps can enhance the favorable evaluation against the implausible onset of continuous inequality.

5. THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

The Hindu Adoptions and Maintenance Act (HAMA) was enacted in India in 1956 as part of the Hindu Code Bills. Among the laws enacted during this period are the Hindu Marriage Act of 1955, the Hindu Succession Act of 1956, and the Hindu Minority and Guardianship Act of 1956. Jawaharlal Nehru spearheaded the initiative for these laws, aimed at codifying and standardizing the prevailing Hindu legal framework. The Adoptions and Maintenance Act of 1956 explicitly delineated the legal obligations of Hindu individuals to provide "maintenance" to their spouses, parents, and in-laws, alongside the legal framework for child adoption.

Adoptions that took place before to the passage date of the legislation are also exempt from its provisions. It applies to all marriages, regardless of whether they were consummated prior to or subsequent to the enactment of the Act. Furthermore, pursuant to modern Hindu law, if the woman is not a Hindu, the husband is not obligated to provide her support under this Act.²

5.1. Maintenance of a wife

As per Section 18 of HAMA, 1956, a Hindu wife is entitled to lifelong maintenance from her husband. The Act remains in force regardless of whether the marriage was constituted before to or subsequent to its enactment. The wife may only terminate her maintenance duties if she engages in adultery or renounces her Hindu faith.

The wife may reside separately from her husband while continuing to receive his assistance. This separation may be justified for numerous reasons: he may have another living wife; he may have converted from Hinduism to a different religion;

¹ 41st Report of Law Commission of India, 1969.

² "The Hindu Adoptions and Maintenance Act 1956".

<http://www.vakilno1.com/bareacts/hinduadoptionsact/s18.htm>

he may have abused her; or he may suffer from a severe case of leprosy.

The father-in-law is obligated to provide support to the woman if her deceased spouse leaves her a widow. This legal stipulation is activated solely if the widowed wife lacks alternative means of self-support. The father-in-law bears no obligation to her if she possesses property, has a source of income, and is capable of self-sufficiency. Moreover, if the widow remarries, this Act ceases to apply to her late husband's father-in-law.³

5.2.Maintenance of a child or of aged parents

A kid is entitled to parental maintenance under this Act until they cease to be classified as minors. This applies to children recognized by one or both parents, regardless of their legitimacy. Daughters with impairments or those requiring parental care must receive assistance until they can independently care for themselves.⁴ The same is covered by Sections 20–22 of the Act, which also addresses maintenance for an individual's dependents.

6.THE HINDU MARRIAGE ACT, 1955

Matrimony constitutes the paramount institution throughout human society. It occurs regularly. Marriage has established the foundation of human society. Marriage creates mutual rights and new social connections between partners. The status and rights of children are established at birth. Each community recognizes a framework for defining these rights and interactions. A legitimate marriage involves accepting a new status and duties acknowledged by others. Marriage is seen as a universally acceptable institution across all societies. Matrimony is among the most intricate and significant human relationships. The statutes governing Hindu marriage were codified and enacted in 1955. The legislature enacted the Hindu Marriage Act of 1955, which encompasses the regulations governing Hindu marriage, restitution of conjugal rights, judicial separation, divorce, annulment of marriage, maintenance, and guardianship. The prerequisites for a legally binding Hindu marriage are delineated in Sections 5 and 7 of the Hindu Marriage Act of 1955. This page outlines recent amendments to the Hindu

Marriage Act of 1955 and offers an overview of the legislation.

6.1.Maintenance under Hindu Marriage Act, 1955

On May 18, 1955, the Indian Parliament enacted the Hindu Marriage Act (HMA), which subsequently became law. The Hindu Succession Act (1956), the Hindu Minority and Guardianship Act (1956), and the Hindu Adoptions and Maintenance Act (1956) were three other key legislations enacted during this period as components of the Hindu Code Bills.

Maintenance pursuant to the Criminal Procedure Code Individuals with substantial resources neglect their ethical and civic responsibilities to care for and assist their spouses, parents, and children. The CrPC ensures that they are never abandoned without financial assistance. Notwithstanding personal laws, maintenance is governed under Section 125 of the CrPC (S. 144 of BNSS, 2023). In cases of conflict between personal law and the Criminal Procedure Code (CrPC) (Now BNSS, 2023), the CrPC (BNSS, 2023) prevails. The term in this section is expansive; for instance, a wife or daughter may support her parents or husband.

6.2.The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The Government of India's Ministry of Social Justice and Empowerment enacted the Maintenance and Welfare of Parents and elderly Citizens Act, 2007 to enhance the provisions for the maintenance and welfare of elderly citizens and parents. It establishes a legal obligation for children and heirs to provide financial support to elderly parents and grandparents through a monthly allowance. It provides a simple, rapid, and cost-effective method to protect the lives and possessions of senior citizens. On December 29, 2007, the President of India assented to the law following its passage by the Indian Parliament.

The first lawsuit under the statute was initiated in November 2011 by Tuticorin residents Siluvai (84 years old) and his spouse Arulammal (80 years old) against their son and daughter-in-law,

³ "The Hindu Adoptions and Maintenance Act 1956".
<http://www.vakilno1.com/bareacts/hinduadoptionsact/h>

[induadoptionsact.htm](http://indiacode.nic.in/fullact1.asp?tfnm=195678)

⁴ <http://indiacode.nic.in/fullact1.asp?tfnm=195678>

alleging neglect and the appropriation of their two residences and gold jewellery.⁵

7.ILLEGITIMATE CHILDREN AND THEIR MAINTENANCE RIGHTS IN INDIA

The term "illegitimacy" originates from a Latin phrase signifying "not in accordance with law." An illegitimate child is an individual born outside of a legal marriage. Despite the law's discrimination against illegitimate offspring within society, modifications have been implemented in reaction to the emergence of liberal thinkers who do not perceive illegitimate children as a source of shame. An illegitimate child is described as one who lacks a legal link with their parents, or nullius filius, contingent upon the marital status of their parents at the time of conception.

8.OBLIGATION OF FATHER-IN-LAW TO MAINTAIN DAUGHTER-IN- LAW

According to Section 19, a prerequisite for the father-in-law to provide support to the daughter-in-law is her inability to sustain herself from her parents' assets. It is essential to determine if her parents have sufficient cash to sustain her, together with the particular conditions of her inability to support herself or her parents. The parents of the daughter-in-law must be consulted for this reason. If they are included as parties to the litigation, then this is achievable. Any conclusion reached in their absence will not be binding upon them. When the daughter-in-law can sustain herself via her parents' estate, the issue of the father-in-law's obligation does not arise. It is also essential to ascertain whether the father-in-law possesses any coparcenary property from which the daughter-in-law is excluded from her portion.

9.MAINTENANCE OF WIDOWED DAUGHTERS-IN-LAW

The husband is obligated to provide alimony to his wife subsequent to the divorce. If the bride's spouse dies, the father is required to offer alimony to her. Section 20 of the statute states the following:

⁵ "Case against son under maintenance act for neglecting parents". The Times of India. Nov 11, 2011. https://web.archive.org/web/20131017074838/http://article.s.timesofindia.indiatimes.com/2011-11-11/madurai/30386794_1_elderly-couple-police-act-senior-citizens-act.

A Hindu is obligated to support both his biological and adoptive sons. A son's entitlement to support is not diminished by his mere reluctance to cohabit with his father, however the maintenance amount may be decreased.⁶ Whether their children are legal or not, Hindu men and women should provide for their families. In the case of *Raj Kishore Mishra v. Smt. Meena Mishra*⁷, the father-in-law's obligation would not be enforced if he lacked the means to support his daughter-in-law from any coparcenary property he possessed, from which she had not received a share.

10.MAINTENANCE OF SECOND WIFE AS PER HINDU LAW

Any marriage between two Hindus is deemed null and void under section 11 of the Hindu Marriage Act of 1955 if any of the requirements listed in clauses (i), (iv), and (v) of section 5 are not met.

At the time of the second marriage, the defendant in *Bai Jivatbai Jethmal v. Milkiram Deepchand & Anr*⁸ had a spouse living. The court determined that the second marriage is null and void, as the original marriage had not been dissolved at the time of the second marriage, in line with section 11 of the Hindu Marriage Act of 1955.

According to Section 13, any marriage, regardless of whether it occurred before or after the enactment of the Hindu Marriage Act of 1955, may be dissolved by a divorce decree. This section includes the grounds for granting a divorce decree.

In the case of a void marriage, the marriage is inherently null, so a divorce judgment is unnecessary as the marriage is already considered legally invalid.

The defendant, the woman in this case, had a living spouse at the time of her second marriage in *R. v. Dolman*⁹. The spouse initiated divorce proceedings citing cruelty as per section 13 of the Hindu Marriage Act of 1955. The court concluded that the marriage is inherently void and therefore a divorce judgment is unnecessary.

⁶ Sardul Singh v. Pratap Singh, 1877 P.R 46, https://lawbhoomi.com/concept-of-maintenance-under-hindu-adoption-and-maintenance-act-1956/#_ftn5

⁷ AIR1995ALL70

⁸ 1961 CriLJ 469

⁹ 949-1 All E R 813

Even though the first marriage was not dissolved, the husband in *Lily Thomas vs. Union of India*¹⁰ converted to a different religion in order to have a second wife. The court concluded that bigamous weddings are prohibited by the Hindu Marriage Act and constitute offenses under Section 17. Thus, any marriage conducted by the husband while the first marriage remains valid would constitute an offense subject to prosecution under Section 17 of the Hindu Marriage Act alongside Section 494 of the Indian Penal Code (S. 82 of *Bharatiya Nyaya Sanhita*, 2023).

11.MAINTENANCE IN LIVE-IN RELATIONSHIPS

A live-in relationship is a living arrangement in which unmarried couples choose to cohabit and maintain a committed relationship without legally getting married.¹¹ India lacks a legal structure that recognizes cohabitation. India has a formal statute delineating the rights and obligations of partners in such relationships, nor does it clarify the status of any offspring resulting from them. However, the courts currently assert that if a man and a woman cohabit as husband and wife for a prolonged duration, the law will presume their marital status.

The Protection of Women from Domestic Violence Act of 2005 provides the female partner in a live-in relationship with protection, maintenance, and the entitlement to palimony, a form of alimony awarded to a former spouse in a non-marital relationship, upon her complaint.¹² The judicial system has consequently afforded adequate protection for female cohabitants and their offspring. While live-in relationships are deemed undesirable in Indian society, they are not legally outlawed. No statute explicitly defines "relationship" in the context of marriage; nonetheless, Section 2(f) of The Protection of Women from Domestic Violence Act, 2005 (hereafter PWDV Act, 2005) employs this phrase. A domestic relationship is characterized as a connection between two individuals who presently cohabit or have previously cohabited, provided they are linked by blood, marriage, adoption, or as family members residing together

as a joint family, as stipulated in Section 2(f) of the Act 2005.¹³

The judicial system has consequently afforded adequate protection for female cohabitants and their offspring. While live-in relationships are deemed undesirable in Indian society, they are not legally outlawed. No statute explicitly defines "relationship" in the context of marriage; nonetheless, Section 2(f) of The Protection of Women from Domestic Violence Act, 2005 (hereafter PWDV Act, 2005) employs this phrase. A domestic relationship is characterized as a connection between two individuals who presently cohabit or have previously cohabited, provided they are linked by blood, marriage, adoption, or as family members residing together as a joint family, as stipulated in Section 2(f) of the Act 2005.¹⁴

12.RIGHT OF MAINTENANCE IN SAME SEX RELATIONSHIPS

In the case of *Navtej Singh Johar v. Union of India*¹⁵, The Honorable Supreme Court of India issued a consequential judgment. A court headed by former Chief Justice Honourable Justice Dipak Misra read down the colonial statute to the extent that it curtailed the rights and individual liberties of the LGBTQ population in this country.

Variations in sexual orientation are present among individuals. A flawless general principle does not exist. A woman is not invariably attracted to a man, nor vice versa. The theme of Michael Kirby's 2013 Tagore Law Lectures was 'Sexual Orientation and Gender Identity: A New Province of Law for India,' presented by the former president of the International Commission of Jurists and judge of the High Court of Australia. Justice Kirby publicly revealed his sexual orientation in 1999.

While it does draw a distinct sexual orientation, being homosexual is by no means a crime. Although the majority of religions oppose it, secular nations shouldn't be influenced by religious principles when enacting secular laws. Consequently, in September 2018, the Honourable Supreme Court of India invalidated a portion of

¹⁰ Manunder Sectionc/0327/2000

¹¹ *White corwley v Dean Winchester*, [(1867) Law reporter 2 HC 269]

¹² Live-in relationships and status of women in India, Wazida Rahman, International journal of law and legal

jurisprudence studies

¹³ Live-in relationships impact on marriage institutions, Abishek Kumar Singh, NALSAR.

¹⁴ Law and live-in relationship in India, Anuja Agarwal.

¹⁵ (2018) 10 SCC 1.

Section 377 of IPC, which prohibited consensual sexual relations between same-sex couples, in its ruling in *Navtej Singh Johar v. Union of India*.

The Supreme Court observed that procreation was regarded as the sole purpose of sexual interactions when Section 377 was written, and any deviation from this perspective was considered aberrant. The court explained that since "homosexuality" is no longer deemed "unnatural," it is illogical to categorize it as a "unnatural offence."

Consequently, consensual gay relationships are not subject to penalties under Section 377 of the existing legislation. The principal legislation in India concerning substantive criminal law is the Indian Penal Code, commonly referred to as "the IPC." The IPC encompasses many rules that impose penalties for distinct offenses. Section 377 constituted a specific legislation.¹⁶ Individuals who participated in sexual acts deemed "against the order of nature" faced legal penalties. The absence of a consent clause in that section was the problem. Section 377 criminalized individuals for participating in sexual acts deemed contrary to the natural order, irrespective of consent, but Section 375, "Rape," penalizes individuals for compelling a woman to engage in sexual intercourse against her will and without her agreement. Prior to proceeding with this discussion, let us elucidate two concepts: "against the order of nature" and "consent."

13.DETERMINATION OF QUANTUM OF MAINTENANCE

The wife may be eligible for maintenance from her husband, son, or daughter, contingent upon numerous socioeconomic benefit statutes; nevertheless, it is difficult to assert that she is entitled to maintenance under all statutes simultaneously and from all parties. The court must evaluate the husband's income when deciding the maintenance amount to be given to her, ensuring a comparable sum is allocated for

him to cover his expenses and settle his obligations.¹⁷

In assessing an appropriate sum for interim maintenance, the court must consider the wife's existing maintenance pursuant to Section 125 of the Criminal Procedure Code (S. 144 of BNSS, 2023). This sum must also be offset. The court must examine these reasons when awarding maintenance under the Hindu Adoptions and Maintenance Act of 1956. The subsequent consideration is the amount of interim support the husband should have disbursed to the wife. Typically, the wife is entitled to receive one-third of her net income as interim maintenance.¹⁸ Moreover, it has been determined that the remedy offered by Section 125 of the Code of Criminal Procedure (S. 144 of BNSS, 2023) is temporary and does not replace the remedy given by the Act. The wife retains the right to submit a claim under Section 18 of the Hindu Adoption and Maintenance Act, 1956, while having consented to relinquish her entitlement to maintenance claims under Section 125 of the Code of Criminal Procedure (S. 144 of BNSS, 2023) in return for permanent alimony.¹⁹ An equitable interpretation of Sections 18, 20, and 23 of the Act reveals that the Court possesses extensive discretionary authority, which must be exercised judiciously to fulfil the legislative intent—specifically, to ensure support for the wife, children, and parents throughout their lifetimes. The duration of the lawsuit is encompassed within "the life period." Consequently, Sections 18, 20, and 23 of the Act should be interpreted as granting the authority to award interim maintenance. Otherwise, it would undermine the primary objective of the legislation.²⁰

The principal objective of the maintenance idea is to guarantee that the woman maintains her dignity post-divorce and is not forsaken by her husband, rather than to impose any responsibility upon him. Consequently, the court determined that the subsequent criteria should be employed

¹⁶ 377. Unnatural offences. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation- Penetration is sufficient to constitute the carnal intercourse necessary to the offence

described in this section.

¹⁷ U. Sree v. U. Srinivas, AIR 2013 SC 415.

¹⁸ Meru Bhai Mandanbhai Odedara v. Raniben Merubhai Odedara, AIR 2000 Guj 277.

¹⁹ Nagendrappa Natikar v. Neelamma, AIR 2013 SC 1541.

²⁰ Santhanam (V) v. Sathya (S), AIR 2003 Mad 94.

to ascertain whether to grant interim or ultimate maintenance in the present case:

The court will examine the wife's history to determine if she can maintain her accustomed standard of life independently from her husband's family. The court will evaluate the wife's educational attainment, professional qualifications, employment history prior to marriage, cessation of employment, and income available.²¹

14.CONCLUSION

Indian Criminal Law and Personal Law encompass many measures designed to empower women and provide them with financial support through an institution known as "maintenance." The law regulates the most significant social and moral dimensions of our life. The expectation that a husband should assist his wife and that parents should support their children is not only socially and morally mandated, but it also signifies a role reversal when parents age and become ill, with children thereafter assuming the burden of caring for their parents. The objective of the law is to support and protect vulnerable parents, abandoned and neglected children, as well as neglected wives and divorcees.

The children have gotten so habituated to their individualistic and materialistic mentality that they do not hesitate to abandon their parents, either to be impoverished in assisted living facilities or by evicting them to secure their own comfort. Our parents, who often believe that "if one is poor, why accumulate wealth; if one is wealthy, why hoard it," due to their own experiences of poverty, are often misrepresented by their children. The law acknowledges the circumstance, enacting personal laws applicable to the individuals concerned and initiating criminal proceedings by integrating elements from the Protection of Women from Domestic Violence Act, 2005, and the Code of Criminal Procedure, 1973. This assists disadvantaged women, children, and elderly or infirm parents.

Ultimately, the provisions established by the Protection of Women from Domestic Violence Act, 2005 have been appended at the conclusion of the document. This is a significant advancement in dismantling the violence and bullying that women have endured in their homes for as long as they

can recall. This Act represents a positive advancement in the swiftly evolving culture where cohabitation is becoming prevalent. While Indian women possess many legal rights to maintenance under Indian law, the actual exercise of these rights seems to be more mythical than factual. The Legislature must act decisively to implement tangible measures that actualize the justice system, ensuring that justice transcends mere nomenclature. The nature of rights under the aforementioned articles differs based on the law and the community; however, the critical inquiry is whether these provisions are sufficient or necessitate more examination.

²¹ [https://www.livemint.com/money/personal-](https://www.livemint.com/money/personal-finance/divorce-and-money-rights-1556205599799.html)

[finance/divorce-and-money-rights- 1556205599799.html](https://www.livemint.com/money/personal-finance/divorce-and-money-rights-1556205599799.html)