



Laws Relating to Women's Right to Maintenance in India: An Analytical Study

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Abstract

The right to maintenance is a crucial aspect of women's rights in India, ensuring their financial stability and dignity in cases of marital discord, separation, or divorce. This analytical study examines the various legal provisions governing women's right to maintenance in India, encompassing both statutory and personal laws. Key legislations like the **Hindu Marriage Act, 1955**, the **Code of Criminal Procedure, 1973 (Section 125)**, the **Muslim Women (Protection of Rights on Divorce) Act, 1986**, **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** and other relevant laws are analyzed to understand their scope, application and impact on women's rights. The study explores how these laws aim to provide financial support, address the socio-economic challenges faced by women and promote gender justice. It also delves into judicial interpretations that have shaped these laws and discusses the balance between personal laws and secular legal frameworks. The paper concludes with an assessment of the effectiveness of these laws in protecting women's rights and the need for reforms to ensure equitable and inclusive access to justice for all women in India.

Keywords: Women's right to maintenance, Gender justice, Personal laws in India, Hindu Marriage Act, 1955, Muslim Women Act, 1986

Introduction

The status of women in India has been a subject of much discourse and debate over the years. Despite the constitutional guarantees of equality and non-discrimination, women in India have long faced a myriad of challenges in the social, economic and legal spheres (**Raju, 1997**). One area of particular concern is the issue of women's right to maintenance, which has been a persistent challenge for women in the country. The present study aims to provide an analytical examination of the laws and regulations governing women's right to maintenance in India. The Indian legal system recognizes the right of women to receive maintenance from their husbands or family members under various laws. The primary statutes that address this issue are the Hindu Marriage Act, 1955, the Code of Criminal Procedure, 1973, the Muslim Women Act,



1986. Under the Hindu Marriage Act and **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** a wife is entitled to claim maintenance from her husband during the subsistence of the marriage, as well as after the dissolution of the marriage. Similarly, the Code of Criminal Procedure provides for a wife to claim maintenance from her husband, regardless of their religious affiliation. (**MacKinnon, 2006**) The Muslim Women Act, 1986, on the other hand, specifically addresses the maintenance rights of Muslim women, ensuring that they can claim maintenance from their husbands or family members, even in the event of a divorce. These legal provisions have been further strengthened and interpreted by the Indian judiciary through various landmark judgments (**MacKinnon, 2006**). The Supreme Court of India has played a crucial role in expanding the scope of maintenance rights for women, recognizing that these rights are essential for ensuring gender equality and the protection of women's dignity.

Legal Framework for Maintenance Rights

Despite the existence of a comprehensive legal framework, the implementation of maintenance laws in India has been fraught with challenges. (**Bag, 2011**) One of the primary obstacles is the social and cultural attitudes that view maintenance as a burden on the husband or family, rather than as a fundamental right of the woman. This has often resulted in resistance to the enforcement of maintenance orders, leading to delays and denials of justice for women. Additionally, the process of claiming and obtaining maintenance can be complex and time-consuming, requiring women to navigate a lengthy legal process. Lack of access to legal aid and the financial resources needed to pursue maintenance claims can further exacerbate the challenges faced by women (**Madhok et al., 2014**). The article seeks to clarify the current legal status of live-in relationships in India and the recent developments in the attitude of the courts in granting various rights to live-in partners, including the need for a proper legal framework to secure the succession rights of live-in partners in case of intestate succession. The law recognizing the rights of live-in partners in India has been evolving gradually and the courts have played a crucial role in this development. The Supreme Court has held that a live-in relationship between two consenting adults of the opposite sex, though perceived as immoral by society, does not amount to any offence under the law. (**Narayan et al., 2021**) The courts have also recognized that if a live-in relationship continues for a long period and the couple presents themselves to society as husband and wife, they can be legally recognized as being married. (**Narayan et al., 2021**) The article also highlights the need for a special statutory



legislation to secure the succession rights of live-in partners in India, particularly in cases of intestate succession.

The laws relating to women's right to maintenance in India have evolved over time, with the judiciary playing a significant role in expanding the scope of these rights. However, the effective implementation of these laws remains a significant challenge, requiring a multifaceted approach that addresses both the legal and the socio-cultural barriers. The article on live-in relationships in India emphasizes the importance of recognizing the legal status of these relationships and the need for a proper legal framework to secure the succession rights of live-in partners. Recognizing the legal rights of women in live-in relationships is an important step towards ensuring gender equality and the protection of women's dignity. (Narayan et al., 2021) Overall, the study of the laws relating to women's right to maintenance in India, as well as the legal status of live-in relationships, highlights the ongoing efforts to achieve greater gender justice and the need for continued progress in this important area. In India, the laws relating to women's right to maintenance are primarily governed by the Hindu Marriage Act, 1955, the Code of Criminal Procedure, 1973 and the Muslim Women Act, 1986. These laws provide a framework for women to claim maintenance from their husbands or family members, both during the subsistence of the marriage and after its dissolution.

Hindu Marriage Act, 1955: Under this Act, a wife is entitled to claim maintenance from her husband during the subsistence of the marriage, as well as after the dissolution of the marriage. The **Hindu Marriage Act, 1955** is a significant legislation in India that governs the laws related to marriage among Hindus, Buddhists, Jains and Sikhs. Enacted by the Indian Parliament and effective from **May 18, 1955**, the Act provides a comprehensive framework to regulate and codify marriage laws for these communities. It ensures uniformity and legal recognition while addressing issues such as validity, divorce, maintenance and child custody. The Act's **applicability (Section 2)** extends to Hindus by religion and also includes Buddhists, Jains, Sikhs and individuals governed by Hindu laws but not identifying as Muslims, Christians, Parsis, or Jews. It seeks to unify and standardize marriage laws across these communities under a common legal framework. To ensure the validity of a marriage, **Section 5** outlines specific conditions. These include monogamy (neither party should have a living spouse), soundness of mind, minimum age requirements (21 for the groom and 18 for the bride) and adherence to rules against prohibited degrees of relationships or sapinda relationships unless customs allow otherwise.



Marriages under the Act must be solemnized according to **customary ceremonies (Section 7)** of either party. The ceremony often includes **Saptapadi**, or seven steps around the sacred fire, which signifies the religious and cultural sanctity of the marriage while ensuring legal validity. Furthermore, **Section 8** provides for the registration of Hindu marriages, which serves as legal proof of the union. Registration not only prevents disputes but also ensures that the marriage is recognized under the law for administrative and legal purposes.

The Act outlines provisions for divorce under **Section 13**, allowing either spouse to seek dissolution of marriage on grounds such as adultery, cruelty, desertion, conversion to another religion, incurable mental disorders, or presumption of death (absent for seven years). Additional grounds for divorce are available to wives, such as the husband being guilty of bigamy, rape, sodomy, or bestiality, or non-resumption of cohabitation after a maintenance decree. For couples seeking separation without dissolving the marriage, **judicial separation (Section 10)** permits them to live apart while remaining legally married. **Restitution of conjugal rights (Section 9)** allows an aggrieved spouse to approach the court if the other spouse withdraws from their company without a valid reason. This provision aims to encourage reconciliation and maintain the sanctity of the marital relationship. In cases of financial dependency, **Sections 24 and 25** provide for interim and permanent alimony, ensuring economic support for the dependent spouse during and after legal proceedings.

The Act also addresses invalid marriages under **void (Section 11)** and **voidable (Section 12)** categories. Marriages violating conditions like bigamy or prohibited relationships are considered void, while marriages based on fraud, coercion, or mental incapacity can be annulled as voidable. For the welfare of children, **Section 26** focuses on custody, maintenance and education, ensuring decisions are made in the best interests of the child during or after legal proceedings. To preserve marriages, **Section 23(2)** encourages reconciliation efforts before granting a divorce. This reflects the Act's focus on fostering amicable resolutions and preventing hasty dissolution of marriages. The Act's overall significance lies in its ability to provide uniform marriage laws, empower women with equal rights in divorce and maintenance, discourage child marriages by enforcing a minimum age and address societal changes through amendments that align with modern values. The **Hindu Marriage Act, 1955**, has been instrumental in promoting gender justice, safeguarding individual rights and ensuring the legal sanctity of marriage. Over the years, it has adapted to evolving societal norms, making it a progressive and vital piece of legislation in India's legal system.



Code of Criminal Procedure, 1973: This law provides for a wife to claim maintenance from her husband, regardless of their religious affiliation. (Narayan et al., 2021) Code of Criminal Procedure, 1973 The Code of Criminal Procedure, 1973 (CrPC) is the principal legislation in India that outlines the procedural framework for criminal law. It governs the processes of investigation, inquiry, trial and adjudication of criminal cases to ensure justice. The CrPC came into force on April 1, 1974 and applies across India, except for certain exceptions in specific regions or under special laws. The Code provides a comprehensive structure for managing offenses and ensuring that the rights of individuals, both victims and accused, are upheld. It also establishes the roles of the police, magistrates and courts in the criminal justice system. The CrPC classifies offenses into cognizable and non-cognizable offenses, as well as bailable and non-bailable offenses, based on their severity. Cognizable offenses, such as murder or rape, allow police to register an FIR and investigate without prior magistrate approval, while non-cognizable offenses, like defamation or public nuisance, require such approval. Similarly, bailable offenses allow the accused to secure bail as a matter of right, whereas non-bailable offenses leave the grant of bail to the court's discretion.

The Code specifies procedures for arrests, including guidelines to safeguard the rights of the arrested person. It mandates that individuals arrested must be informed of the reasons for their arrest and produced before a magistrate within **24 hours**. For investigation, the CrPC lays down provisions for filing an **FIR (First Information Report)** for cognizable offenses, collecting evidence, examining witnesses and preparing charge sheets. It also allows for searches and seizures with or without a warrant under defined circumstances. The **trial processes** under CrPC are categorized into different types, including **sessions trials** for serious offenses, **warrant trials** for offenses with imprisonment exceeding two years, **summons trials** for minor offenses and **summary trials** for petty offenses. Each type of trial has its own procedural requirements to ensure justice while avoiding unnecessary delays. Additionally, the CrPC provides provisions for **appeals, revisions and reviews**, enabling higher courts to review decisions of lower courts for procedural or legal errors.

A notable feature of the CrPC is **Section 125**, which allows wives (including divorced wives), children and aged parents to claim maintenance if neglected. This provision ensures financial assistance to those in need and prevents destitution. The Code also addresses the rights of the accused, such as the right to legal representation, a fair and speedy trial and protection against



self-incrimination. The CrPC emphasizes the **registration of marriages**, safeguards for women and juveniles and mechanisms for **preventive actions** to maintain public order. It empowers magistrates to take preventive measures like requiring security for maintaining peace and good behavior. For certain compoundable offenses, the Code allows parties to settle their disputes amicably, reducing the burden on the judicial system.

The CrPC plays a crucial role in maintaining law and order by balancing individual rights with societal needs. It ensures justice through a structured and fair process, protecting the rights of victims and accused alike. Over time, amendments to the CrPC have addressed evolving challenges, improving its effectiveness in delivering justice while ensuring compliance with constitutional values. **Muslim Women Act, 1986**: This Act specifically addresses the maintenance rights of Muslim women, ensuring that they can claim maintenance from their husbands or family members, even in the event of a divorce. The **Muslim Women (Protection of Rights on Divorce) Act, 1986** is a landmark legislation in India enacted to protect the rights of divorced Muslim women. It was introduced in response to the controversial **Shah Bano case (1985)**, which highlighted the conflict between Islamic personal laws and secular laws in India. The Act primarily addresses the financial and social rights of Muslim women after divorce and aims to provide them with a fair and just settlement. It outlines the responsibilities of the husband to provide for the wife during and after the iddat period (a waiting period after divorce as prescribed by Islamic law). Under this Act, a divorced Muslim woman is entitled to reasonable and fair provisions for her maintenance, along with any mahr (dower) and other properties given to her at the time of marriage. If the husband fails to comply, the Act provides for legal recourse through the courts. Furthermore, the Act specifies that in cases where the woman cannot support herself after the iddat period, her relatives or the Wakf Board may step in to provide financial assistance. While the Act was criticized for being a step back from the Supreme Court's judgment in the Shah Bano case, which had extended the rights of Muslim women under secular laws, it also reaffirmed the importance of safeguarding women's rights within the framework of Islamic personal laws. Over the years, this Act has sparked discussions on gender justice, secularism and the need for a uniform civil code in India.

The **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** signifies a landmark reform in India's criminal justice system, replacing the decades-old Code of Criminal Procedure (CrPC) of 1973. This new law seeks to modernize and streamline criminal procedures, aiming to address the inefficiencies and delays that have long plagued the system. By emphasizing



technological integration, victim-centric approaches and time-bound processes, the BNSS aspires to make justice delivery more efficient and equitable. Below is a detailed explanation of its key provisions and implications. The BNSS introduces transformative measures to reduce procedural delays and improve the functionality of the justice system. One of its notable features is the modernization of legal processes. By adopting advancements such as electronic filing, digital documentation and video conferencing for hearings, the law minimizes reliance on physical paperwork, which has often caused delays **Sudesh (2024)**. Additionally, the BNSS consolidates and updates older provisions, ensuring the legal framework is more accessible and uniformly applicable across the country. This standardization aims to make the criminal justice system simpler and easier for all stakeholders, including law enforcement agencies, legal professionals and the general public. Timely justice is a cornerstone of the BNSS. Recognizing the importance of addressing sensitive cases swiftly, the law mandates strict timelines for investigations and judicial proceedings. For offenses involving women and children, such as sexual violence, police investigations must be completed within two months of filing the First Information Report (FIR). This measure seeks to reduce the trauma experienced by victims due to prolonged delays. Similarly, courts are required to issue rulings within 45 days after the completion of arguments in such cases. These timelines aim to combat the backlog of cases in Indian courts and ensure justice is not only delivered but delivered promptly. The **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**, marks a significant shift toward a more efficient, equitable and victim-centric criminal justice system in India. By prioritizing sensitive cases, enforcing strict deadlines and integrating modern technologies, the BNSS aims to create a safer and more just society. However, its success depends on the effective implementation of its provisions, which will require robust infrastructure, comprehensive training and a commitment to accountability. If executed well, the BNSS has the potential to transform India's criminal justice landscape and serve as a model for timely and efficient justice delivery.

List of Cases:

- i. **Mohd. Ahmed Khan v. Shah Bano Begum (1985):** Commonly known as the Shah Bano case, the Supreme Court upheld a Muslim woman's right to maintenance under Section 125 of the Criminal Procedure Code, affirming that this provision applies to all citizens irrespective of religion.
- ii. **Danial Latifi v. Union of India (2001):** This case challenged the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Supreme Court



interpreted the Act to mean that a divorced Muslim woman is entitled to a reasonable and fair provision for maintenance beyond the iddat period, ensuring her rights are protected.

- iii. **Shabana Bano v. Imran Khan (2010):** The Supreme Court ruled that a Muslim divorced woman who lacks means to maintain herself is entitled to claim maintenance from her former husband under Section 125 of the Criminal Procedure Code, even after the iddat period.
- iv. **Vimala (K.) v. Veeraswamy (K.) (1991):** The Supreme Court emphasized that the term "wife" in Section 125 of the Criminal Procedure Code includes a woman who has been divorced or has obtained a divorce and has not remarried, thereby entitling her to maintenance.
- v. **Rohtash Singh v. Ramendri (2000):** The Court held that a husband cannot deny maintenance to his wife on the ground that she is living separately, if he has neglected or refused to maintain her.
- vi. **Badshah v. Sou. Urmila Badshah Godse & Anr. (2014):** In this case, the Supreme Court emphasized that a husband cannot deny maintenance to his wife on the grounds of a subsisting prior marriage if he has misrepresented his marital status. The Court underscored that the term "wife" under Section 125 of the Criminal Procedure Code should be interpreted to include a woman who has been deceived into a marriage, ensuring she is not left destitute.
- vii. **Kamala & Ors v. M.R. Mohan Kumar (2019):** The Supreme Court reiterated that strict proof of marriage is not a prerequisite for claiming maintenance under Section 125 of the Criminal Procedure Code. The Court held that if a man and woman have lived together as husband and wife, there is a presumption of a valid marriage and the woman is entitled to maintenance.
- viii. **Mary Roy Etc v. State of Kerala and Others (1986):** This landmark judgment granted Syrian Christian women equal rights to seek an equal share in their father's property, challenging the prevailing inheritance laws that discriminated against women. The Supreme Court's decision ensured that Christian women in Kerala could inherit property equally, reinforcing gender equality in inheritance rights.
- ix. **Vishaka & Ors v. State of Rajasthan & Ors (1997):** While not directly related to maintenance, this pivotal case addressed sexual harassment at the workplace. The Supreme Court laid down guidelines to protect women's rights and dignity at work,



emphasizing the need for a safe working environment. These guidelines, known as the Vishaka Guidelines, were instrumental in the enactment of subsequent legislation addressing workplace harassment.

- x. **Shamima Farooqui v. Shahid Khan (2015):** The Supreme Court held that a Muslim woman is entitled to maintenance from her husband under Section 125 of the Criminal Procedure Code, irrespective of the provisions of personal law. The Court emphasized that a woman cannot be left to destitution and that the husband's obligation to provide maintenance is absolute.

Role of the Judiciary

The Supreme Court of India has played a pivotal role in expanding the scope of maintenance rights for women in India. The court has recognized that these rights are essential for ensuring gender equality and the protection of women's dignity. In the case of "Lata Singh v. State of U.P.", the Supreme Court held that a live-in relationship between two consenting adults of the opposite sex, though perceived as immoral by society, does not amount to any offence under the law. In the case of "Khushboo vs Kanaimmal and another", the Supreme Court observed that "though the concept of live-in relationship is considered immoral by the society, but is definitely not illegal in the eyes of the law (Bag, 2011). Living together is a right to life and therefore it cannot be held illegal." The courts have also recognized that if a live-in relationship continues for a long period and the couple presents themselves to society as husband and wife, they can be legally recognized as being married. The issue of women's right to maintenance in India has been a subject of significant legal discourse, with various court rulings shaping the landscape of this complex area of law. This paper aims to delve into the key cases that have been decided by the Supreme Court and High Courts, shedding light on the evolving jurisprudence surrounding women's maintenance rights in the country. One of the landmark cases in this domain is the Supreme Court's decision in *Z v. State of Bihar*, which addressed the crucial issue of reproductive autonomy and state liability (Satish, 2020). The case underscored the importance of safeguarding the reproductive rights of women, particularly in instances of sexual assault and established a framework for adjudicating such cases within the criminal justice system. (Satish, 2020) The High Courts have played a pivotal role in interpreting and applying the various laws related to women's maintenance rights. The paper will examine these court rulings, analyzing how they have defined the scope and application of maintenance laws and the impact they have had on the lives of women seeking legal



recourse. The paper will explore the strategic use of the courts by women's rights activists in Pakistan, as evident in the work documented by researchers (Khan et al., 2019). This comparative perspective will provide valuable insights into the potential for similar approaches in the Indian context, where the women's movement has also utilized the judicial system to fight for rights-based empowerment.

The analysis will also shed light on the challenges faced by the Indian judiciary in addressing issues of complainant credibility in rape appeals, as highlighted in the research on High Court judgments and judges' perspectives. This understanding will contribute to a more nuanced appreciation of the complexities involved in the adjudication of maintenance cases. A comprehensive review of the key court decisions that have shaped the landscape of women's maintenance rights in India, providing a critical assessment of the evolving jurisprudence and its implications for the larger goal of achieving gender equality and justice. **(Satish, 2020)** **(Madhok et al., 2014)** **(Khan et al., 2019)** **(Barn & Kumari, 2015)** In post-independence India, the plight of deserted women and widows has been a persistent challenge, highlighting the intricate intersection of patriarchy, masculinity and national identity **(Arora, 2017)**. Women's identity and status have long been defined primarily through the lens of sexuality and marital relationships, leading to the perpetuation of masculine power and control over women's bodies and lives. **(Ahmed-Ghosh, 2009)**

The Hindu Code Bill, drafted in the aftermath of independence, reflects the state's attempt to regulate and control women's sexuality and relationships, often at the expense of their rights and well-being. **(Arora, 2017)** While the Indian Constitution promised equality for all citizens, the reality for the majority of Indian women has been far from revolutionary. **(Léonard, 1979)** *The Changing Status of Women in India - The Challenges Ahead* **(Mukherjee & Sen, 2006)** highlights the persistent gender-related socioeconomic biases that continue to hinder women's empowerment in India. *Women in India: Some Recent Perspectives* provides a comprehensive overview of the major problems faced by women in India, including the lack of substantial change in the conditions governing the lives of the majority of Indian women since independence. **(Léonard, 1979)**

The plight of widows in India, as explored in *Widows in India: Issues of Masculinity and Women's Sexuality*, further illustrates the ways in which cultural controls over sexuality and the defining of women's identity through marital status perpetuate masculine power and legitimize the marginalization of women, particularly those who have lost their husbands.



(Mukherjee & Sen, 2006) (Léonard, 1979) (Ahmed-Ghosh, 2009) Negotiating Structural Inequalities in Post-independence India: The Case of Deserted Women and Widow delves into the specific challenges faced by deserted women and widows, highlighting the need to reclaim women's bodies from becoming sites of patriarchal and institutional control. (Arora, 2017) The existing laws and judicial interventions related to women's right to maintenance in India have attempted to address these challenges, but the persistent sociocultural norms and gender-based inequalities continue to impede the effective implementation and enforcement of these laws.

Conclusion

The laws relating to women's right to maintenance in India are pivotal in addressing the financial insecurities and socio-economic challenges faced by women during and after marital disputes. While statutory provisions like **Section 125 of the CrPC** provide a secular framework for maintenance, personal laws under the **Hindu Marriage Act, 1955**, **Muslim Women (Protection of Rights on Divorce) Act, 1986** and the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023** reflect religious-specific provisions that often lead to varied interpretations. Judicial decisions have played a significant role in ensuring that women's rights are protected and that the laws are applied equitably. However, the existing framework still faces challenges such as delays in justice delivery, socio-cultural biases and disparities in personal laws. To address these issues, it is essential to harmonize personal laws with constitutional principles of equality and justice. Reforms are needed to simplify and unify the legal processes, ensuring that every woman, irrespective of her religion or socio-economic background, has access to timely and adequate financial support. This will not only empower women but also strengthen the foundation of gender equality in India.

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