

MAINTENANCE RIGHTS OF WOMEN IN INDIA: A CRITICAL ANALYSIS OF LEGAL PROVISIONS AND JUDICIAL TRENDS

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ABSTRACT

Maintenance law in India sits at the crossroads of constitutional guarantee and socio - economic reality. Designed to shield women from financial destitution occasioned by marital breakdown, separation, or desertion, the statutory architecture of maintenance spans a range of secular and personal-law instruments from the criminal-procedure mechanism now codified in *Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023*¹ to the *Hindu marriage and adoption statutes*,² and the *Protection of Women from Domestic Violence Act, 2005*.³ Constitutional anchoring in *Articles 14, 15, and 21*⁴ provides the normative foundation for treating maintenance not as charitable relief, but as an enforceable entitlement tethered to human dignity. Despite this elaborate framework, a persistent gap between legislative intent and lived experience endures: proceedings are slow, quantum awards inconsistent, enforcement weak, and access to justice uneven. This article provides a critical doctrinal examination of maintenance law in India. It interrogates the concept and historical development of maintenance, maps the statutory landscape including the interplay between personal and secular laws, surveys landmark judicial decisions from *Shah Bano*⁵ through *Danial Latifi*⁶ to *Rajnish v. Neha*,⁷ and identifies structural impediments

¹ The Code of Criminal Procedure, 1973, § 125 (India), now replaced by Bharatiya Nagarik Suraksha Sanhita, 2023, § 144.

² Hindu Marriage Act, 1955, § 24 (India); Hindu Adoptions and Maintenance Act, 1956, § 18 (India).

³ Protection of Women from Domestic Violence Act, 2005, § 20 (India).

⁴ INDIA CONST. arts. 14, 15, 21.

⁵ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945 (India).

⁶ Danial Latifi v. Union of India, (2001) 7 SCC 740 (India).

⁷ Rajnish v. Neha, (2021) 2 SCC 324 (India).

to effective implementation. Drawing on a rights-based and comparative perspective, the article advances targeted reform proposals uniform quantum guidelines, time-bound disposal mandates, and stronger enforcement infrastructure aimed at converting legal entitlement into substantive economic justice for women.

I. INTRODUCTION

Maintenance, in its elemental legal sense, denotes a judicially enforceable obligation to furnish financial support to dependants spouse, children, or aged parents who lack the independent means to sustain themselves. Within the domain of women's rights, the concept carries a significance that transcends the merely pecuniary. It functions simultaneously as a corrective instrument against structural gender disadvantage and as a constitutional assertion that dignity cannot be contingent upon the continuance of a marital bond.

The Indian legal system has, over several decades, layered together a plurality of maintenance regimes. Personal laws govern married women within their respective religious communities, while the secular provisions of the erstwhile Section 125 of the Code of Criminal Procedure, 1973 re-enacted with modifications as Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 apply across all religious communities without distinction.⁸ The Protection of Women from Domestic Violence Act, 2005 further enlarged the remedial palette by treating economic deprivation itself as a species of domestic violence. Together, these instruments constitute what might be described as India's maintenance architecture expansive in aspiration but uneven in performance.

The watershed judgment in *Mohd. Ahmed Khan v. Shah Bano Begum*⁹ crystallised the secular character of maintenance, holding that a divorced Muslim woman could seek relief under the criminal procedure provision irrespective of personal law. Subsequent legislative and judicial developments including the

⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, § 144 (India).

⁹ *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945, ¶ 10 (India).

enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986¹⁰ and its purposive re-reading in *Danial Latifi v. Union of India*¹¹ illustrated the dynamic and often contentious relationship between personal religious norms and constitutional imperatives. More recently, the Supreme Court in *Rajnish v. Neha*¹² attempted to introduce procedural uniformity by prescribing income-disclosure affidavits and guidelines for determining quantum, signalling a judicial acknowledgment of the systemic dysfunctions that have accumulated over time.

Yet the candid assessment of any practitioner or researcher engaged with maintenance litigation in India is that the law on paper and the law in practice diverge sharply. Months-long delays in securing even interim maintenance, unpredictable quantum awards, strategic non-disclosure of income, and the cumbersome machinery of execution proceedings represent structural failures that no single judicial pronouncement has been able to remedy. Against this backdrop, the present article critically analyses the maintenance framework in India, identifies its fault lines, and proposes reforms grounded in constitutional values, comparative experience, and the lived realities of women who invoke these laws.

II. OBJECTIVES AND SCOPE OF STUDY

The article pursues five interrelated objectives. First, it seeks to clarify the conceptual and constitutional foundations of maintenance, locating the right within the larger framework of substantive equality. Second, it undertakes a systematic analysis of the key statutory instruments governing maintenance, with particular attention to their overlap and interaction. Third, it traces judicial trends across landmark decisions, assessing whether the judiciary has produced a coherent and rights-consistent body of maintenance jurisprudence. Fourth, it identifies the principal implementation and enforcement challenges that limit the practical utility of existing legal provisions. Fifth, and most importantly, it

¹⁰ Muslim Women (Protection of Rights on Divorce) Act, 1986 (India).

¹¹ *Danial Latifi v. Union of India*, (2001) 7 SCC 740, ¶ 24 (India).

¹² *Rajnish v. Neha*, (2021) 2 SCC 324 (India).

advances concrete reform proposals aimed at enhancing the effectiveness of maintenance law as an instrument of gender justice.

The scope is necessarily broad. It encompasses maintenance rights of married, separated, and divorced women under both personal laws and secular statutes. It includes an examination of the Protection of Women from Domestic Violence Act, 2005 in so far as it provides monetary relief. Recent judicial developments, including Supreme Court guidelines on quantum and procedure, fall squarely within the scope. A limited comparative reference is made to international human rights frameworks¹³ and to jurisdictions notably the United Kingdom, Canada, and Australia that have adopted structured or formulaic approaches to spousal maintenance. This comparative engagement is not intended to advocate wholesale transplantation of foreign models but to illuminate alternatives that might inform domestic reform.

III. STATEMENT OF THE RESEARCH PROBLEM

The central problem this article addresses is the structural gap between India's formally progressive maintenance law and its substantive delivery to women in need. Five distinct but interrelated difficulties define this gap.

A. Multiplicity of Legal Remedies

A woman may simultaneously seek maintenance under the criminal procedure statute, the Hindu Marriage Act, the Hindu Adoptions and Maintenance Act,¹⁴ the Special Marriage Act,¹⁵ and the Domestic Violence Act. Rather than strengthening access to justice, this plurality has generated procedural entanglement. Parallel proceedings in different forums produce conflicting orders, jurisdictional confusion, and duplication of evidence, imposing disproportionate costs on economically vulnerable claimants and contributing to institutional backlog.

¹³ Convention on the Elimination of All Forms of Discrimination Against Women, art. 16, Dec. 18, 1979, 1249 U.N.T.S. 13.

¹⁴ Hindu Adoptions and Maintenance Act, 1956, § 18 (India) (providing maintenance to a Hindu wife from the husband throughout her lifetime).

¹⁵ Special Marriage Act, 1954, §§ 36–37 (India).

B. Absence of Uniform Quantum Guidelines

No Indian statute prescribes a formula or minimum criteria for calculating maintenance. Courts exercise wide discretion, producing awards that vary dramatically across similar factual matrices. The unpredictability of outcomes undermines the principle of equality before law and fuels litigation. While the Supreme Court in *Rajnish v. Neha* issued guidelines on income disclosure and quantum assessment, these directions lack statutory force and are applied inconsistently at the trial court level.

C. Procedural Delays

Applications for interim maintenance which address the most pressing survival needs routinely take months, and sometimes years, to be decided. For women without independent income, this delay is not a procedural inconvenience but an economic catastrophe. Extended financial uncertainty forces many claimants into disadvantageous settlements or causes them to abandon proceedings entirely.

D. Inconsistent Judicial Approaches

Even on settled questions such as whether a woman with some earning capacity may claim maintenance different High Courts and trial courts apply divergent standards. In *Chaturbhuj v. Sita Bai*,¹⁶ the Supreme Court held that mere earning capacity does not extinguish a maintenance claim; yet this principle is regularly overlooked or qualified in ways that prejudice claimants. Inconsistency erodes confidence in the legal system and defeats the predictability that rule of law demands.

E. Enforcement Failures

The grant of a maintenance order does not ensure its payment. Deliberate non-compliance, concealment of income, strategic change of employment, and protracted execution proceedings are endemic features of maintenance litigation. The available sanctions attachment of property, recovery of arrears, and even

¹⁶ *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316, ¶ 8 (India).

imprisonment are infrequently invoked and their deterrent effect correspondingly diminished.

IV. RESEARCH QUESTIONS

This article is organised around five principal research questions:

- Do maintenance laws in India, as presently constituted and judicially interpreted, ensure substantive economic justice to women?
- Is there meaningful uniformity in the determination of maintenance quantum across courts, statutes, and religious communities?
- How have courts shaped maintenance jurisprudence, and has judicial activism produced doctrinal consistency or exacerbated uncertainty?
- Do overlapping statutory provisions amplify protection for women or inadvertently complicate access to justice?
- Is a uniform national maintenance code either desirable or practically achievable within India's plural legal order?

V. HYPOTHESIS

This article proceeds on the hypothesis that while India's maintenance legislation is architecturally comprehensive and constitutionally anchored, it is operationally deficient. The plurality of remedies, the absence of uniform quantum standards, procedural delay, inconsistent adjudication, and weak enforcement collectively ensure that the formal promise of maintenance law is, for a substantial proportion of claimants, not redeemed in practice. It is further hypothesised that targeted legislative reform specifically, the statutory codification of quantum guidelines, mandatory timelines for interim maintenance orders, and the introduction of technology-assisted enforcement mechanisms would, without requiring a wholesale overhaul of India's plural legal system,

substantially narrow the gap between legal entitlement and practical relief. Judicial harmonisation alone, absent statutory backing, is insufficient to produce the systemic change that women's maintenance rights demand.

VI. RESEARCH METHODOLOGY

This article adopts a doctrinal research methodology. It examines what maintenance law is, how it has been interpreted, and what gaps and inconsistencies it contains, rather than how litigants actually experience the system through field-based empirical enquiry. The doctrinal method is well-suited to legal scholarship that aims to evaluate the internal coherence and constitutional legitimacy of a body of rules, and to formulate normatively grounded reform proposals.

Primary sources include the Constitution of India, the relevant statutes *the Hindu Marriage Act 1955*, *the Hindu Adoptions and Maintenance Act 1956*, *the Special Marriage Act 1954*, *the Protection of Women from Domestic Violence Act 2005*, and *the Bharatiya Nagarik Suraksha Sanhita 2023* and the case law of the Supreme Court and High Courts. The analysis of judicial decisions follows the standard common-law methodology of tracing the evolution of doctrine through ratio and obiter, identifying tensions between judgments, and assessing whether the cumulative body of case law constitutes a coherent and principled whole. Law Commission Reports, particularly the *252nd and 262nd Reports*,¹⁷ are treated as authoritative secondary primary sources reflecting informed policy assessment.

Secondary sources include leading academic commentaries *Mulla's Principles of Hindu Law*¹⁸ and *Paras Diwan's Law of Marriage and Divorce*¹⁹ as well as peer-reviewed journal articles sourced from SCC Online and Manupatra. The comparative component draws on publicly available legislative texts and academic commentary from the United Kingdom, Canada, and Australia and on

¹⁷ Law Commission of India, Report No. 252 (2015); Report No. 262 (2017).

¹⁸ Mulla, *Principles of Hindu Law* (LexisNexis, 22nd ed. 2018).

¹⁹ Paras Diwan, *Law of Marriage and Divorce* (LexisNexis, 7th ed. 2018).

the text of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These external materials are employed illustratively and not as direct normative models. The article does not seek to offer field data on the frequency of non-compliance or the average duration of proceedings, as such data lies beyond doctrinal enquiry; instead, it relies on judicial observations and Law Commission findings where empirical context is needed.

VII. LIMITATIONS OF THE STUDY

The doctrinal method, while appropriate for the objectives pursued, carries inherent limitations that must be acknowledged. First, it does not capture the social and psychological dimensions of maintenance disputes as experienced by individual claimants dimensions that empirical or socio - legal research would illuminate. Second, the article does not provide statistical data on rates of compliance with maintenance orders, average duration of proceedings, or the proportion of claims abandoned mid-stream; such data, where it exists, is dispersed across court records that are not systematically compiled or publicly accessible in India.

Third, the comparative analysis is limited in depth. The legal systems of the United Kingdom, Canada, and Australia operate within socio - economic, institutional, and cultural contexts that differ substantially from India's; the comparative observations offered here are intended as illustrative benchmarks rather than prescriptive templates. Fourth, Muslim personal law maintenance rights a complex and contested domain with its own distinct trajectory following *Shah Bano*, *Danial Latifi*, and subsequent legislative and judicial developments are addressed at a level of generality commensurate with the article's broader analytical focus; a full treatment of Muslim women's maintenance rights would require a dedicated study. Fifth, the article reflects the law as stated in published judgments and statutes up to early 2025; legislative or judicial developments occurring thereafter are not captured.

VIII. SCHEME OF THE STUDY

The article proceeds in a structured sequence designed to move from conceptual foundation to critical analysis and, ultimately, to reform. Following this introductory section, Part X sets out a literature review that situates the article within existing scholarship. Part XI examines the concept, constitutional foundations, and historical development of maintenance law in India, tracing its evolution from a moral and religious obligation in ancient and medieval jurisprudence through colonial legislation to post-independence codification. Part XII analyses maintenance under criminal law specifically *Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023* and under the principal personal-law statutes. Part XIII examines maintenance under the Protection of Women from Domestic Violence Act, 2005, with particular attention to the concept of economic abuse. Part XIV surveys judicial trends and landmark decisions. Part XV undertakes a critical analysis of the challenges identified procedural delays, quantum inconsistency, enforcement failure, and socio-economic barriers. Part XVI offers a brief comparative and international perspective. Part XVII proposes reforms. The article concludes in Part XVIII with a synthesis of findings.

IX. REVIEW OF LITERATURE

A. Doctrinal Scholarship

The foundational doctrinal works on maintenance in India are *Mulla's Principles of Hindu Law* and *Paras Diwan's Law of Marriage and Divorce*. *Mulla's* treatment situates maintenance within classical Hindu law and traces its statutory codification through the 1955 and 1956 Acts, offering detailed exegesis of the conditions for entitlement and the judicial construction of relevant provisions. His approach is primarily exposition clarifying what the law is rather than critical evaluation of whether the law works. *Diwan* adopts a more reformist posture. Writing from a feminist legal theory perspective, he frames maintenance as an instrument of gender justice rather than a corollary of matrimonial status, and he emphasises the structural economic disadvantages unpaid domestic labour, limited employment opportunities, skill depreciation during years of homemaking that maintenance law must address if it is to promote substantive

rather than merely formal equality. Together, these works provide the academic bedrock upon which contemporary maintenance scholarship is built.

B. Judicial Scholarship and the Shah Bano Controversy

The academic literature on maintenance jurisprudence is substantially organised around the controversy generated by *Mohd. Ahmed Khan v. Shah Bano Begum*. Legal scholars have debated at length whether the Supreme Court's holding that *Section 125 CrPC* applied to all women irrespective of religion was a legitimate exercise of secular judicial reasoning or an impermissible incursion into personal religious law. The enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986 was widely criticised as a political capitulation that compromised women's constitutional rights, while the Court's subsequent purposive reading of the 1986 Act in *Danial Latifi* was celebrated as a sophisticated exercise in constitutional harmonisation. These debates illuminate the deep tensions between pluralism and uniform constitutional standards that continue to define Indian maintenance law.

C. Recent Scholarship on Procedural Uniformity

Scholarly attention has increasingly shifted to the procedural deficiencies of maintenance law. Academic commentary on *Rajnesh v. Neha* has been broadly favourable, acknowledging the Supreme Court's effort to introduce income-disclosure obligations and reduce multiplicity of proceedings. Critics have, however, noted the limited reach of judicial guidelines that lack statutory backing. The *Law Commission's reports* on family law and women's rights highlight enforcement as the weakest link in the maintenance chain, a finding echoed across peer-reviewed scholarship. There is an emerging consensus in the literature that sustainable reform requires legislative intervention rather than continued reliance on judicial creativity, and that such reform must address enforcement infrastructure as much as substantive entitlement.

D. Gaps in Existing Literature

Existing scholarship tends to address personal-law maintenance and criminal-procedure maintenance in silos, with comparatively little integrated analysis of the interplay between all available remedies and the procedural

complexity that this plurality generates. The present article seeks to address this gap by treating the maintenance framework as an integrated system, assessing its aggregate performance rather than the merits and limitations of individual statutes or judgments in isolation. The article also foregrounds the enforcement dimension often treated as peripheral in doctrinal scholarship as a central variable in evaluating whether maintenance law fulfils its constitutional promise.