

## **Legislative Provisions of Maintenance for wife and husband in India – Critical Analysis**

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### **ABSTRACT**

Constitutional Law of India is one of the most important laws of our country and according to this law, we have the right to freedom of religion. According to Religion, all provisions for different issues like marriage, divorce, restitution of conjugal rights, maintenance, custody of children, adoption, etc. are provided by different personal laws. For every living person, means of subsistence are required. The act of providing means of subsistence and necessities to life by the person to a spouse, children, or parent is known as ‘maintenance’. On one hand, we talked about Uniform Civil Code by Directive principles of the State Policy, and on the other hand various laws for various religions, Is UCC followed in our country? All personal laws relating to marriage generally protect the religion-wise marriage traditions. Indian society is patriarchal. Husband and wife play different active and passive roles after marriage. Maintenance provided by one spouse to another at the time of divorce, through and after the proceedings are completed. Personal Laws for maintenance also give separate provisions for women and men in different religious laws. Some provisions of maintenance protect men and women, whereas others do not protect.

When we talk about the removal of gender inequality and sustainable development goal, equivalent provisions in personal laws for men and women is required. In India, At present personal laws related to maintenance give protection to the spouse but not in an equal way. Today Men and women are treated equally, and husbands can also file petitions to demand support from their wives by some personal laws.

In this paper, the researcher shall attempt to evaluate maintenance provisions in various religious laws and then identify gaps in the provisions and analyse them critically.

**Keywords: Maintenance, Uniform Civil Code, Personal laws in India**

## INTRODUCTION

Generally, maintenance is demanded by wife against husband but gender bias is gradually being eliminated in our society at present time. Laws related to maintenance gives protection to wife as well as husband in some personal laws in some religion only. In past, generally wife demanded maintenance against her husband but Nowadays, in our society claim for maintenance is also filed by husband against his wife in family court. During the proceedings of divorce and after completion of proceedings of divorce, amount of maintenance is declared by the court for the spouse. This amount is support system of spouse when they are leaving without spouse in society. “devdattam patibharyam vindate necchayatmanh, tam sadhvim bibharyanityam devanam priyamacharanm” – Manusmriti IX, 95.<sup>1</sup> It means husband obtain his wife as a gift from the gods, and not by his own wish; hence he has to support the faithful wife, thereby doing what is agreeable to the gods. These wordings are connected with relation of husband-and-wife faithfulness. When divorce is getting by one party from another party, it is dependent on some specific grounds which are against faithfulness which is against Hindu’s holly book so that some amount for the support of wife is pursued by law which is known as maintenance.

When we are living in a patriarchal society; people generally think all responsibility of maintenance is on the shoulders of males only. After marriage, all responsibility is on the husband. After divorce, the situation is also the same except for some religions. This is the main question in front of our society. When we said about the Joint family system where is another relation for the support of abandoned and divorced females?

Alimony pendente lite and permanent maintenance are two types of maintenance. Nature, amount, time, etc. of maintenance is different from case to case. The amount of maintenance is differently decided by the Court in all disputed cases. The amount of maintenance is dependent on different bases like the income of both parties, status in society and other income of the parties. Legal PROVISIONS of the Hindu religion and Parsi religions is provide maintenance to wife and husband also. When we said equality and reasonable classification in law, why not for other religion’s husband? Even secular laws of maintenance like CRPC (Criminal Procedure Code, 1973

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<sup>1</sup> <https://www.wisdomlib.org/hinduism/book/manusmriti-with-the-commentary-of-medhatithi/d/doc201460.html>. (n.d.). Wwww.Wisdomlib.Org., last visited on 27.11.22

) and SMA (The Special Marriage Act, 1954) also do not give the provisions for husband's maintenance of all religions.

## **LITERATURE REVIEW**

1. "Law Relating to Maintenance in India with Special Reference to Uniform Civil Code"<sup>2</sup>, By Ramesh Byali – Researcher has taken basic idea of research from this research paper. In this research paper Judicial approach of maintenance is not covered by him which is covered in this research article.

2. "Study on Law relating to maintenance in India with special reference to personal laws and criminal procedure code" (ISSN: 2320 – 5407, Int. J. Adv. Res. 5(9), 208-216), By Sanjay I. Solanki – In this research paper, an issue relating to maintenance to women in live-in – relationship is not covered by the author which is covered in this research article.

## **MEANING AND DEFINITIONS OF MAINTENANCE**

The concept of maintenance is arrived from the theory of an undivided family. The head of the family has one of the duties to maintain his family members.

The word maintenance has been used in a broad sense. The definition of maintenance is given by The Hindu Adoption and Maintenance Act, 1956 (HAMA, 1956). As per Section 3(b)(i) of HAMA, "The amount of maintenance includes provisions for food, clothing, residence, education and medical treatment and attendance in all cases."<sup>3</sup> Three situations are there when wife can demand against her husband: (1) When she lives with husband, (2) When she lives separately from husband and (3) When she lives separately under a judicial separation or after divorce.

The law of maintenance of the spouse is mainly divided into two parts.

I. Alimony pendente lite maintenance where maintenance amount is approved for temporary time during the proceedings for separation or divorce petition.

Alimony pendente lite includes amount of expenses of the proceedings and it is generally provided monthly when the court feels a reasonable reason for it. Alimony during the pendency of the court proceedings is different from case by case.

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<sup>2</sup> Byali, R. (2022, August 12). Research Paper on Law relating to maintenance in India with special reference to Uniform Civil Code. International Journal of Research Publication and Reviews, 848–851. <https://doi.org/10.55248/gengpi.2022.3.8.25> – last visited on 1<sup>st</sup> December, 2023

<sup>3</sup> Dr. Paras Diwan, Family Law (Allahbad Law House 10th edi 2013), Page no. 342 (10th ed.).

II. Permanent maintenance where maintenance is approved after disposal and completion of the case for separation or divorce.<sup>4</sup>

## **OBJECTIVE OF RESEARCH**

The main Aim of the paper is to analyze the legal provisions related to the right of maintenance for wife and husband in India. When we talked about gender equity and husband both needs equal rights in all religion. This paper tries to examine the need for equal maintenance rights in all religious personal laws.

- To study legal provisions of rights to maintenance in India towards wife and husband.
- To study the role of the judiciary in the maintenance of spouses.
- To examine the need for equal maintenance rights in all religious personal laws.
- To study the national legal regime in specific reference to the husband.

## **RESEARCH METHODOLOGY**

In this research paper writing, the author shall use the doctrinal research method. All materials, judgments, and legislative provisions are taken from various books as well as official websites.

## **HYPOTHESIS**

- Religious wise Personal laws governing the maintenance of wife and husband are sufficient in the present era in India.
- There is a need for amendment to these laws to establish uniformity regarding maintenance in the existing laws.
- There are sufficient maintenance provisions for individuals living like husband and wife.

## **DIFFERENT RELIGIOUS APPROACH TOWARDS PROVISIONS OF MAINTENANCE**

As per the opinion of Manu, “parents, wife and children must be maintained by person even doing hundred misdeeds”.<sup>5</sup> Brihaspati also placed the responsibility of maintenance on man.

### **Legislative provisions related to maintenance for wife and husband**

By the interpretation of different laws, maintenance covered not only food, clothing, and residence but also those things that are required to sustain human being and their lives.

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<sup>4</sup> B.M. Gandhi’s Family Law, Page no. 273 (2nd ed., Vol. 1). EBC.

<sup>5</sup> Dr. Paras Diwan, Modern Hindu Law (Codified and Uncodified) (Allahbad Law House 23<sup>rd</sup> edi 2016), Page 460

The below provisions cover Maintenance pendente lite as well as Permanent maintenance according to different religious laws:

The main object of the pendente lite maintenance is to provide maintenance to a plaintiff or defendant who has no specific means to defend the suit and its expenses. It is called temporary relief which is provided during the procedure according to order by court.

The main object of Permanent maintenance is to provide permanent relief after completion of the procedure of divorce and Nullity of marriage to the spouse.

### **Hindu Law - For Wife as well as husband as per the HMA, 1955**

Section 24 of the Hindu Marriage Act, 1955 (HMA, 1955)<sup>6</sup> gives provision of maintenance for husband and wife. This provision concerns maintenance pendente lite for both without gender discrimination. If any of the proceedings for restitution of conjugal rights, divorce, judicial separation, or nullity of marriage is going on according to the HMA, 1955, an order for maintenance pendente lite is given by the court. It covers the expenses of proceedings also. Three conditions should have to emerge for the demand for this type of maintenance. Firstly, Proceedings according to this act should have to begin. Secondly, those who claiming pendente lite maintenance are unemployed and have no source of independent income, and thirdly, a party should have to apply for this type of maintenance.

Section 25 of the Hindu Marriage Act, 1955 is connected with Permanent alimony and maintenance for wife and husband. The court that has the jurisdiction can pass the order for this type of maintenance. The court has also power to vary, amend, or change the quantum of maintenance. This section is applicable in case of divorce and restitution of conjugal rights.

Section 18 of the Hindu Adoption and Maintenance Act is concerned with maintenance to Hindu wives only. In this act, Widow can also demand maintenance from her in-laws. The quantum of maintenance is different from case by case.

### **For Muslim wife**

No direct provision for Pendente lite is given by Muslim codified law like MWPRD (The Muslim Women (Protection of Rights on Divorce) Act, 1986) Act.<sup>7</sup>

Section 3 of the MWPRD Act is concerned with maintenance of divorced women.

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<sup>6</sup> B.M. Gandhi's Family Law, Page no. 275 (2nd ed., Vol. 1). EBC.

<sup>7</sup> Mulla, Mohammedan Law Digest with basic principles, Edition 2016, Page 472.

Also, no uncodified laws are given maintenance provision for husband or wife under the Hanafi school as well as Ithana Anshari School which is connected with Muslim laws.

### **For Christian Wife**

Section 36 of the Indian Divorce Act provides provisions of Alimony pendente lite to the Christian wife only who has connected with proceedings under the IDA.

Section 37 of the Indian Divorce Act speaks the permanent alimony to a Christian wife after the completion of proceedings.

### **For Parsi wife and husband – Parsi Law**

Section 39 of the Parsi Marriage and Divorce Act<sup>8</sup> is connected with Alimony pendente lite to Parsi Wife as well as husband. Three conditions should be complete by the spouse for demanding alimony pendente lite according to this section like party must apply, the party has no independent source of income and the court would give order which includes expenses of the suit.

Section 40 of the PMDA husband as well as wife can demand permanent maintenance.

Section 41 of the PMDA says amount of maintenance will be paid to wife or a trustee appointed by wife or by court.

### **Secular Laws**

- **SMA (The Special Marriage Act, 1954)<sup>9</sup>**

Section 36 of the SMA connected that parties alimony pendent lite who are married under this act and proceeding is begun under this section. Only wife can demand maintenance under this act.

Section 37 of the SMA provides permanent maintenance to wife only who is married under this act.

- **Provisions under CRPC (Criminal Procedure Code, 1973)<sup>10</sup>**

Sections 125 to 128 of the CrPC (The Criminal Procedure Code) is connected to Order for maintenance to wives, children, and parents. Any of religion's person (Wife, children or parents) who is unable to maintain their selves can demand maintenance under this act without any type of religious discrimination.

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<sup>8</sup> [https://www.indiacode.nic.in/show-data?actid=AC\\_CEN\\_3\\_20\\_00076\\_1936-03\\_1535537599943&sectionId=30055&sectionno=39&orderno=41](https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00076_1936-03_1535537599943&sectionId=30055&sectionno=39&orderno=41). (n.d.). India code.

<sup>9</sup> [https://www.indiacode.nic.in/handle/123456789/1387?view\\_type=search&sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/1387?view_type=search&sam_handle=123456789/1362). (n.d.). India code.

<sup>10</sup> [https://www.indiacode.nic.in/handle/123456789/16225?view\\_type=search&sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/16225?view_type=search&sam_handle=123456789/1362). (n.d.). India Code.

## **Maintenance Provisions in Conflict**

Generally, according to the doctrine of pious obligation, husband must maintain his wife. After discussion of the above different religious provisions below conflicted matters are concerned with these provisions.

- Provisions for the wife's maintenance are covered directly under every personal law which are concerned with maintenance but the husband's maintenance provisions are only under Hindu laws and Parsi laws.
- Persons who are living like husband and wife, there are no special provisions for them about maintenance.
- Even religious-wise personal laws are also different like the HMA talk about maintenance for Hindu wife and husband. The HAMA does not talk about the husband's maintenance.

## **Judicial Approach and Maintenance**

Some important judgment which is provided by the court.

- Indra Sarma V. V.K.V. Sarma [(2013) 15 SCC 755]

This case is a landmark judgment related to Maintenance to women who is live-in-relationship.

The Supreme Court interpreted the term "relationship in the nature of marriage" and defined the parameters of it. Section 20 of The Protection of Women from Domestic Violence Act, 2005 (Monetary Relief) is connected to this case. Parameters are not fulfilled and maintenance are not provided.

- Nivya V M v. Shivaprasad M K (2017)<sup>11</sup>

In this case, the Kerala High Court, involved the woman being ordered to pay maintenance to her husband for spoiling his career by raising a false allegation of rape against him by a Family Court.

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

This case is important because not only section 125 of CrPC is connected with the matter but also "The Muslim Women (Protection of Rights on Divorce)" Act, 1986 is connected.

- Danial Latifi V. Union of India [AIR 2001 SC 3958]

This case concerns Muslim women's right to maintenance. Muslim women can demand maintenance under section 125 of the Criminal Procedure Code.

## **UNIFORM CIVIL CODE AS PER CONSTITUTIONAL LAW OF INDIA AND PROVISIONS OF MAINTENANCE**

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<sup>11</sup> <https://indiankanoon.org/doc/177540678/> last visited on 10<sup>th</sup> December, 2023

Article – 44 of the Constitution Law of India serves provision for the Uniform Civil Code in India.<sup>12</sup> If we interpret this provision with different religious maintenance provisions, it is not applicable. Even if any of the personal laws matters does not talk about uniform provisions regarding maintenance, marriage, divorce, adoption, etc.

### **LIMITATION OF STUDY IN THIS RESEARCH PAPER**

- Only personal obligation to maintenance is connected in this paper.
- The topic of maintenance is also concerned with parents and children but only husband's and wife's maintenance provisions are covered in this paper.
- Non-Doctrinal method is not connected in this paper.

### **CONCLUSION**

Towards the conclusion of this paper, it becomes necessary that maintenance provisions for both wives and husbands in India are dissimilar, emphasizing the urgent need for uniformity. The call for a Uniform Civil Code has grown increasingly prominent in contemporary times, highlighting the necessity for a comprehensive legal framework that applies uniformly to all citizens. This proactive approach can contribute to a more equitable and responsive legal system that reflects the evolving social dynamics of contemporary Indian society.

### **SUGGESTIONS**

After completion of the analysis and study of the legal provisions, some loopholes are observed by the researcher, particularly in this topic, which are mentioned below.

- ✓ Nowadays, Amendment in personal laws related to maintenance for men and women is required for gender equality.
- ✓ Live in-relationship concept is also a contemporary issue in India. Those who are living like husband and wife have no direct provision which is required.
- ✓ Responsibility of maintenance is concerned only on husband and wife, why after marriage relation with daughter is very short. Succession laws said the daughter has property rights but no provision for maintenance rights against their guardian.
- ✓ Provisions for rehabilitation of divorced wife is not provided. After divorce, only maintenance is given, where is the real protection of the mind and step of rehabilitation is required.

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<sup>12</sup> [https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution\\_of\\_india.pdf](https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf) last visited on 12th November, 2023



- ✓ Case by case, the amount of maintenance is differed. Provisions of basic amount should have to be recommended by law.
- ✓ Again and again, we as well as the judiciary talked about the Uniform Civil Code in India, this is also one of the areas where it is required.
- ✓ The amount of maintenance is decided and the decree is given by a particular court but sometimes execution of order and decree is very difficult so time bounding execution is required.
- ✓ Applicability of Uniform Civil Code in case of maintenance is required.
- ✓ Lack of awareness regarding the rights of maintenance is one of the basic problems in our country. For removal of this problem, the arrangement of a Free Legal Campaign, arrangement of Legal Seminar and conferences where the general public can also participate with academicians is also required. This topic is concerned with society so general public participation is required.

## **WEBLIOGRAPHY**

1. <https://www.indiacode.nic.in/>

## **BIBLIOGRAPHY**

1. B.M. Gandhi's Family Law, Volume 1, 2<sup>nd</sup> Edition 2021, EBC Publisher
2. Dr. Paras Diwan, Family Law, 10<sup>th</sup> Edition 2015, Allahabad Law Agency
3. Mayne's Treaties on Hindu Law and Usage, 18<sup>th</sup> Edition 2020, Bharat Law House
4. Mulla Mohammedan Law Digest with Basic Principles, Edition 2016, Vinod Publications (P) Ltd.