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A Critical Analysis of Law of Maintenance under Indian Administration of Justice System

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ABSTRACT

This critical analysis explores the jurisprudential underpinnings and provisions of the legal framework of maintenance under the Indian Administration of Justice System, concentrating on its applicability to diverse personal laws. The research delves into the goals of maintenance, highlighting its constitutional foundation in guaranteeing social justice. It examines in detail the legal framework around maintenance for mothers, fathers, and children, covering aspects covered by secular, Muslim, Christian, and Hindu laws. "The Code of Criminal Procedure, 1973 the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Protection of Women from Domestic Violence Act, 2005 are all covered in the analysis". Interim maintenance and its importance are clarified by discussing the role of the Malimath Committee Report and CrPC amendments. The paper also explores maintenance under live-in relationships and outlines circumstances where a wife may not be entitled to claim maintenance, along with provisions for cancellation.

I. INTRODUCTION

Maintenance of women, children, and parents is a subject of great concern for all. Jurisprudentially, no system of law can afford to be casual to this significant aspect of human activity. In view of this reality, every society, from primitive to modern, has tried to develop legal and extra-legal mechanisms for its regulation, specifying rights and obligations of each member of the society in the manner suited to them. Earlier, the regulative measures were either customary or religious. Since the beginning of the modern legislative era, most of the traditional norms have been replaced, modified or supplemented by statutory laws. Even in various Muslim countries, a great deal of legislation has taken.

(A) Object of Maintenance

The Constitutional concept of guaranteeing social fairness must serve as the foundation for the

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provision of maintenance. Its current foundation is the social duty to stop homelessness and vagrancy.

In the case of *Vimala v Veeraswamy* the Supreme Court noted that the provision, which aims to provide basic, quick, but restricted relief, aims to prevent the neglected wife and children from becoming impoverished and being forced to turn to a life of prostitution, immorality, or criminality in order to survive³.

In *Chaturbhuj v Sitabai*⁴ the Court explained the objective of the provision of maintenance in the following words, “The objective of Maintenance proceeding is not to punish a person for his past neglect but to prevent vagrancy, by compelling those who can provide support to those who are unable to support themselves, and who have a moral claim to support. It provides a speedy remedy for supply of food, clothing and shelter, to the deserted wife. It gives effect to fundamental rights and the natural duties of a man to maintain his wife, children and parents, when they are unable to maintain themselves”.

Because it is watched from legal decision that provisions of maintenance in spite of the fact that vital and critical for women are allowed with the objective to prevent destitution and vagrancy. There's a have to be perceive the changing slant of the society. Right to maintenance have to be perceived as crucial right of women to live with nobility. The women have been in disadvantageous position from centuries. Within the patriarchal Indian society, she faces discrimination from her childhood. Women are not taught at standard to their male kin. Indeed, in the event that, confronting all chances she gets educated and takes up her career, it is she who is compelled to allow up her career to meet the requests of marital obligations.

According to section 3(b)(i) of The Hindu Adoptions and Maintenance Act, 1956 “Maintenance” includes⁵—

- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;
- (ii) in the case of an unmarried daughter, also the reasonable expenses of an incident to her marriage;

“Maintenance” is an amount payable by the husband to his wife who is unable to maintain herself either during the subsistence of marriage or upon separation or divorce. Various laws

³(1991) SCC (2) 375

⁴1 (2008) DMC 22 SC

⁵ Section 3(b) in The Hindu Adoptions And Maintenance Act, 1956.

governing maintenance are as follows:

For Hindus — Hindu Marriage Act, 1955; Hindu Adoption and Maintenance Act, 1956.

For Muslims — Muslim Women (Protection of Rights on Divorce) Act, 1986.

For Parsis — Parsi Marriage and Divorce Act, 1936.

For Christians — Divorce Act, 1869.

Secular laws — Criminal Procedure Code, 1973; Special Marriage Act, 1954.

II. MAINTENANCE UNDER DIFFERENT LAWS

(A) Hindu Marriage act, 1955

Under this act, section 24 gives a wide meaning to the word ‘maintenance’ as

“Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner’s own income and the income of the respondent, it may seem to the court to be reasonable”⁶.

[“Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be”⁷.]

And also, section 25 of the act provides us the proportion in which the maintenance will be provided to the applicant and it states,

- i. *“Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall * * * pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent’s own income and other property, if any, the income and other property of the applicant [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the*

⁶ The Hindu Marriage Act, 1955

⁷ Ibid.

*respondent*⁸.

- ii. *“If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just”⁹.*
- iii. *“If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just”¹⁰].*

(B) Hindu Adoption and Maintenance Act, 1956

Section 18 of the Hindu Adoptions and Maintenance Act, 1956, deals with the maintenance and separate residence of a Hindu wife. The section states that a Hindu wife, whether married before or after the commencement of the Act, shall be entitled to be maintained by her husband during her lifetime. The main provisions of Section 18 are as follows:

1. **Maintenance:** A Hindu wife is entitled to be maintained by her husband during her lifetime, subject to the provisions of the section.
2. **Separate Residence:** A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim, under certain circumstances, such as if the husband is guilty of desertion.
3. **Conditions:** The right to maintenance and separate residence are subject to certain conditions, such as the wife not being unchaste or ceasing to be a Hindu by conversion to another religion¹¹.

The Hindu Adoptions and Maintenance Act, 1956, was enacted as part of the Hindu Code Bills, which aimed to codify and standardize the current Hindu legal tradition. The Act applies to Hindus and those considered under the umbrella term of Hindus, including Buddhists, Jains, and Sikhs.

⁸ *ibid*

⁹ *ibid*

¹⁰ *ibid*

¹¹ Section 18 in The Hindu Adoptions And Maintenance Act, 1956.

(C) Special Marriage Act, 1954

Section 37 of the Special Marriage Act, 1954, pertains to “Permanent alimony and maintenance¹².” “It states that any court exercising jurisdiction under Chapter V or Chapter VI of the Act may, at the time of passing any decree, order that the respondent shall pay to the petitioner a monthly or lump sum alimony for the maintenance of the petitioner”.

The section also outlines conditions under which the court may alter the maintenance amount, such as the change in circumstances of the parties. This provision is aimed at ensuring the financial security and maintenance of the spouse, and it is an important aspect of the legal framework governing marriages under the Special Marriage Act, 1954.

(D) Protection of Women from Domestic Violence Act, 2005

Section 20 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) deals with the right to maintenance for the aggrieved person¹³. The main provisions of Section 20 are as follows:

1. **Monetary Relief:** While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and not limited to, such as:
 - Loss of earnings
 - Medical expenses
 - Loss caused due to the destruction, damage, or removal of any property from the control of the aggrieved person
2. **Medical Expenses and Compensation:** Section 20 of the DV Act allows the Magistrate to pass orders directing the respondent to provide medical expenses and compensation to the aggrieved person.
3. **Overlap with Section 125 of the Code of Criminal Procedure (CrPC):** There is an overlap between Section 20 of the DV Act and Section 125 of the CrPC, particularly when it comes to the provision of maintenance or financial support for women who are victims of domestic violence. While Section 125 of the CrPC provides for the payment of monthly maintenance to dependents, including wives, children, and parents who are unable to maintain themselves whereas Section 20 of the DV Act focuses on providing targeted relief to women victims of domestic violence.

¹² Section 37 in The Special Marriage Act, 1954

¹³ South Carolina Code of Laws.

The DV Act recognizes domestic violence as a distinct offense and provides protection and relief to women, focusing on the civil aspects of domestic violence, such as obtaining protection orders, residence orders, monetary relief, and custody orders for children.

(E) The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, is a significant legislation in India that provides for the maintenance and welfare of parents and senior citizens. The provisions of the Act are as follows:

1. **Maintenance:** The primary objective of the Act is to ensure that senior citizens receive necessary financial support and maintenance from their children or legal heir(s). As per the Act, any person over the age of 60 years is considered to be a senior citizen. Under the Act, children and relatives (legal heir) are legally obligated to provide financial assistance to their elderly family members, if they are unable to maintain themselves¹⁴.
2. **Identifying Role of Organizations:** The Act has rightly incorporated the authorisation of voluntary organizations registered as society under the Societies Registration Act, 1860 in making applications for maintenance to the Tribunal, on behalf of the senior citizens and in enforcing the property rights on behalf of the senior citizens¹⁵.
3. **Establishment of Maintenance Tribunals:** The Act establishes Maintenance Tribunals at the district level to address complaints related to the maintenance and welfare of senior citizens¹⁶. These Tribunals have the authority to issue maintenance orders and ensure compliance. They provide a legal recourse for senior citizens who face neglect or abandonment. The State Government has been cast with a duty to constitute for each Sub-division one or more Tribunals and Appellate Tribunals for the purpose of adjudicating and deciding upon the order for maintenance. The Act also provides provision of Appeal against the order of the Tribunal by the aggrieved party within a period of sixty days from the date of the order.
4. **Healthcare and Medical Facilities:** The act emphasizes the importance of healthcare services for senior citizens. It mandates the State government to provide beds for all

¹⁴ Nagpal, N. and Abidi, A. (2023) *Maintenance and welfare of parents and senior citizens act, 2007- key provisions*, Lexology. Available at: <https://www.lexology.com/library/detail.aspx?g=c7260fdc-2b85-4f44-abe1-5a593a288aee> (Accessed: 02 September 2024).

¹⁵ *ibid*

¹⁶ *Maintenance and welfare of parents and senior citizens act, 2007* (2024) S.S. Rana & Co. Available at: <https://ssrana.in/articles/maintenance-welfare-parents-senior-citizens-act-2007/> (Accessed: 02 September 2024).

senior citizens and further mandates separates queues to be arranged for senior citizens¹⁷. As a welfare measure, it is also provided that the State Government may establish old age homes in each district for those senior citizens who are deemed indigent, and in need.

5. **Protection of Property Rights:** The Act safeguards the property rights of senior citizens, preventing fraudulent practices and abuse. In various instances, where the senior citizen has transferred property via a gift deed to their son/daughter; the senior citizen has the right to revoke the gift in case the transferee fails to provide the basic amenities and basic physical needs of the transferor¹⁸.
6. **Punishment:** The Act clearly states that any person having the care of senior citizen leaves or neglects in performing his duties shall be punishable with imprisonment of either description for a term which may extend to three months or fine which may extend to five thousand rupees or with both¹⁹.

The Act is a crucial legal measure to provide relief to senior citizens undergoing abuse and aims to protect the rights of senior citizens and provide them with care. It reflects the changing sociocultural dynamics and the need to safeguard the elderly from exploitation and abuse.

(F) Muslim Law

Maintenance under Muslim law is known as “Nafqah”²⁰, which means what a man spends on his family, including food, clothing, and lodging. The maintenance provisions of Muslim law are different from other personal laws. The obligation of the husband to maintain his wife in all circumstances is a fundamental principle of Muslim law. A Muslim husband is bound to maintain his wife even if there is no agreement between them regarding this. A Muslim husband is not bound to maintain his wife only if the marriage is void or irregular²¹.

The concept of maintenance is to protect the rights of the wife and protect her dignified life. Liability for maintenance is imposed on a person being his wife, being his relative, i.e., children, grandchildren, aged parents, and other relatives. The divorced woman who remains unmarried

¹⁷ *ibid*

¹⁸ The Maintenance and Welfare of Parents and Senior Citizens (Amendment) Bill 2019, <https://socialjustice.gov.in/writereaddata/UploadFile/83211672138255.pdf>

¹⁹ Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

²⁰ Kusum. “MAINTENANCE OF A DIVORCED MUSLIM WIFE : A CRITIQUE OF THE PROPOSED LAW.” *Journal of the Indian Law Institute*, vol. 22, no. 3, 1980, pp. 408–13. *JSTOR*, <http://www.jstor.org/stable/43950703>. Accessed 2 Sept. 2024.

²¹ Drishti Judiciary (no date) *Maintenance under Muslim law, Drishti Judiciary*. Available at: <https://www.drishtijudiciary.com/to-the-point/ttp-muslim-law/law-of-maintenance-under-muslim-law> (Accessed: 02 September 2024).

after the “Iddat” and is unable to maintain herself is entitled to get maintenance from her such relatives who would inherit her properties upon her death²².

In the absence of any such relatives or where they have no sufficient means, then ultimately, the liability to maintain her is cast upon the Waqf Board of the state in which she resides. The amount of maintenance depends on the financial position of the person who is bound to provide it. Under Muslim law, women are considered to be unable to maintain themselves, and it is believed that it is the liability of the husband to maintain them²³.

However, each Muslim is bound to provide maintenance for the ancestors and descendants, and he is also entitled to obtain maintenance from them as well, provided that the person who has to pay has sufficient means.

(G) Christian Law

Provisions for maintenance under Christian law are contained in The Indian Divorce Act, 1869, as amended in 2001. The relevant provisions are²⁴:

1. **Maintenance:** A Christian woman can claim maintenance from her spouse if she is unable to maintain herself, and the husband having sufficient means refuses or neglects to maintain her.
2. **Alimony:** The court may order the husband to pay alimony to the wife, either as a lump sum or as a monthly allowance.
3. **Medical Expenses:** The court may also order the husband to pay for the medical expenses of the wife.
4. **Permanent Alimony:** The court may grant permanent alimony to the wife in certain circumstances, such as if she is unable to maintain herself due to illness or disability.

The Divorce Act of 1869 governs the person who professes the Christian religion, and it provides for the maintenance of the wife by the husband²⁵. The Act recognizes the right of the wife to claim maintenance from her husband if she is unable to maintain herself, and the

²² *Right to maintenance under Muslim law* (no date) *Legal Service India - Law, Lawyers and Legal Resources*. Available at: <https://www.legalserviceindia.com/legal/article-9074-right-to-maintenance-under-muslim-law.html> (Accessed: 02 September 2024).

²³ LawBhoomi (2024) *The concept of maintenance under Muslim law*, *LawBhoomi*. Available at: <https://lawbhoomi.com/the-concept-of-maintenance-under-muslim-law/> (Accessed: 02 September 2024).

²⁴ Admin (2023) *Concept of maintenance for women under Christian law*, *The Law Communicants*. Available at: <https://thelawcommunicants.com/concept-of-maintenance-for-women-under-christian-law/> (Accessed: 02 September 2024).

²⁵ *Maintenance Under Christian Law* (no date) *Maintenance under Christian law*. Available at: <https://www.legalserviceindia.com/helpline/maintenance-christian-law.htm> (Accessed: 02 September 2024).

husband having sufficient means refuses or neglects to maintain her.

The amount of maintenance depends on the financial position of the person who is bound to provide it. The court may order the husband to pay alimony to the wife, either as a lump sum or as a monthly allowance. The court may also order the husband to pay for the medical expenses of the wife. In certain circumstances, the court may grant permanent alimony to the wife.

(H) Code of Criminal Procedure (CrPC), 1973

Sections 125 to 128 of the Code of Criminal Procedure (CrPC) lay down provisions for the maintenance of wives, children, and parents. These sections provide a summary procedure to enforce liability for maintenance and ensure a speedy remedy. Section 125 specifically deals with the order for maintenance of wives, children, and parents, outlining the entitlement to maintenance and the conditions for granting maintenance²⁶.

It is a secular provision governing maintenance laws across all personal laws and is not related to the personal laws of parties. The amount of maintenance depends on the financial position of the person who is bound to provide it. Section 128 of the CrPC pertains to the enforcement of the order of maintenance, detailing the procedure for the enforcement of the maintenance order. The provisions under these sections aim to prevent homelessness and provide support to those who are unable to maintain themselves, irrespective of their religion or caste²⁷.

The concept of maintenance under Muslim law, known as “Nafqah” is also discussed in the context of the provisions under the CrPC. Under Muslim law, the husband is bound to provide maintenance to the wife, and each Muslim is bound to provide maintenance for ancestors and descendants, subject to their financial means. The concept of maintenance under Muslim law is aimed at ensuring the financial support of family members who are unable to maintain themselves²⁸.

a. Who is entitled to claim maintenance under CrPC

Under the Code of Criminal Procedure (CrPC), Sections 125 to 128 lay down provisions for the maintenance of wives, children, and parents. A wife, child, or parent is entitled to claim maintenance if they are unable to maintain themselves and the person who is bound to provide

²⁶ CR PC notes- S.125-128 maintenance - order for maintenance of wife and children etc. (S-128) (no date) Studocu. Available at: <https://www.studocu.com/in/document/dr-vishwanath-karad-mit-world-peace-university/constitutional-law/cr-pc-notes-s125-128-maintenance/31478357> (Accessed: 02 September 2024).

²⁷ CRPC Section 128 - enforcement of order of maintenance (no date) A Lawyers Reference. Available at: <https://devgan.in/crpc/section/128/> (Accessed: 02 September 2024).

²⁸ Rai, D. (2022) *Proceedings for maintenance of wives, children and parents under CRPC*, iPleaders. Available at: <https://blog.iplayers.in/proceedings-for-maintenance-of-wives-children-and-parents/> (Accessed: 02 September 2024).

maintenance has sufficient means but refuses or neglects to maintain them. The person who claims maintenance must be unable to maintain themselves, and the amount of maintenance depends on the financial position of the person who is bound to provide it²⁹. The provisions under these sections aim to prevent homelessness and provide support to those who are unable to maintain themselves, irrespective of their religion or caste.

b. Who is wife?

The term “wife” for the purposes of Section 125 of the Code of Criminal Procedure (CrPC) includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. This definition encompasses both a legally wedded wife and a divorced woman who has not remarried. The provision is interpreted to have a broad and expansive meaning, and strict proof of marriage is not a precondition for maintenance under Section 125 of the CrPC. The aim is to prevent women from falling into vagrancy and destitution, which the provision of maintenance under Section 125 is meant to prevent³⁰.

Recommendations of the Malimath Committee Report

The Malimath Committee Report, submitted in 2003, contained several recommendations aimed at improving the efficiency and effectiveness of the criminal justice system in India. However, the report did not specifically focus on maintenance provisions under Section 125 of the Code of Criminal Procedure (CrPC)³¹. The key recommendations of the Malimath Committee report are as follows:

1. **Establishment of a national police commission:** The report suggested the establishment of a national police commission to oversee the functioning of the police.
2. **Appointment of more judges:** The committee recommended the appointment of more judges to reduce the backlog of cases.
3. **Vocational training and education to prisoners:** The report proposed the provision of vocational training and education to prisoners to help them rehabilitate and reintegrate into society.

²⁹ (No date) *Maintenance of wife, children and parents, Section 125 CRPC*. Available at: <https://www.drishtijudiciary.com/to-the-point/ttp-code-of-criminal-procedure/maintenance-of-wife-children-and-parents> (Accessed: 02 September 2024).

³⁰ Pranav *et al.* (2023) *Section 125 CR.P.C. – maintenance to wife, nyayconnection.com - MAKING INDIA LEGALLY EDUCATED*. Available at: <https://nyayconnection.com/section-125-cr-p-c-maintenance-to-wife/> (Accessed: 02 September 2024).

³¹ Ranjan, P. (2023) *Malimath Committee - key recommendations, Licchavi Lyceum*. Available at: <https://licchavilyceum.com/malimath-committee-recommendations-upsc-notes-2022/> (Accessed: 02 September 2024).

4. **Reforms in the Evidence Act:** The committee suggested amendments to the Evidence Act to make it more victim-friendly and to allow the prosecution to rely on electronic evidence.
5. **Setting up of State Security Commissions:** The Malimath Committee recommended the setting up of State Security Commissions, as suggested by the National Police Commission, to insulate the police from political pressure.
6. **Changes to the Criminal Procedure Code:** The report proposed changes to the Criminal Procedure Code to make it more victim-inclusive, giving victims the right to appeal against acquittals and entitlement to compensation from the state.

While some of the recommendations were accepted and implemented, others were either modified or not implemented at all³².

c. Interim Maintenance

The Code of Criminal Procedure (CrPC) provides for the grant of interim maintenance under Section 125. The Magistrate may insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. The Magistrate can provide for interim maintenance with effect from the date of the order or from the date of the application. The provision of Section 125(2) CrPC expressly enables the Court to grant maintenance from the date of the order or from the date of the application³³. The court is required to record reasons in support of such order. The purpose behind the provision relating to maintenance in general and interim maintenance is to prevent homelessness and provide support to those who are unable to maintain themselves.

The report suggested that the application for grant of interim maintenance is to be disposed of within sixty days from the date of service of notice on the respondent. However, the time taken to dispose of the application is significantly more than what is statutorily provided. Additionally, the discretion about the time from which the maintenance is to be granted has been taken away. The report also mentioned the relevant test for determining an intermediary order and the procedure for challenging an order granting interim maintenance. The provision of interim maintenance under Section 125 of the CrPC is an important aspect of the legal

³² Malimath Committee - History, objectives and recommendations (no date) Testbook. Available at: <https://testbook.com/ias-preparation/malimath-committee> (Accessed: 02 September 2024).

³³ Indulia, B. and Ridhi (2023) *Revision against order granting interim maintenance: Inviting interference towards an interlocutory order?*, SCC Times. Available at: <https://www.sconline.com/blog/post/2023/09/18/revision-against-order-granting-interim-maintenance-inviting-interference-towards-an-interlocutory-order/> (Accessed: 02 September 2024).

framework governing maintenance, aimed at providing immediate financial support to the applicants during the pendency of the maintenance proceedings³⁴.

d. Amendment

The 2001 amendment to the Code of Criminal Procedure (Amendment) Act, 2001, introduced several changes to the maintenance provisions under Section 125, 127, and 128 of the Code of Criminal Procedure of 1973. The major changes introduced by the 2001 amendment are as follows:

1. **Interim Maintenance:** The amendment introduced the provision of interim maintenance, allowing for the grant of maintenance during the pendency of the proceedings. This provision aimed to provide immediate financial support to the applicants who are unable to maintain themselves.
2. **Timeframe for disposing of applications:** The amendment made it mandatory for the Magistrate to dispose of the application for maintenance within sixty days from the date of service of notice on the respondent. This timeframe was introduced to ensure speedy justice for women and children who are victims of domestic violence and are unable to maintain themselves.
3. **Amendment to Section 125(2) CrPC:** The amendment to Section 125(2) CrPC removed the discretion about the time from which maintenance is to be granted, making it mandatory for the court to order maintenance from the date of the application.

These changes were significant steps towards ensuring the financial security and welfare of women and children who are victims of domestic violence and are unable to maintain themselves.

The case of *Savitri v. Govind Singh Rawat*³⁵, is a significant legal precedent concerning the grant of interim maintenance. In this case, the Supreme Court held that a Magistrate has the power under Section 125 of the Criminal Procedure Code to make an order directing a person to pay a reasonable sum as interim maintenance pending the disposal of an order for maintenance, even though nothing in Section 125 explicitly confers such a power. The case established the Magistrate's authority to grant interim maintenance pending the disposal of the suit for maintenance, providing crucial support to individuals in need during the pendency of

³⁴ More, D. (2023) *Interim maintenance under Section 125 of CRPC*, lawyersclubindia. Available at: <https://www.lawyersclubindia.com/articles/interim-maintenance-under-section-125-of-crpc-15604.asp> (Accessed: 02 September 2024).

³⁵1986 AIR 984

legal proceedings.

(I) The Muslim Women(Protection of rights on Divorce) Act, 1986

The Shah Bano case is a significant legal milestone in the fight for the protection of Muslim women's rights in India. In April 1978, a 62-year-old Muslim woman, Shah Bano, filed a petition in court demanding maintenance from her divorced husband Mohammed Ahmad Khan³⁶. The Supreme Court upheld the right to alimony in the case, but the judgment set off a political battle and controversy about the extent to which courts could intervene in matters of personal law. The case laid the ground for Muslim women's fight for equal rights in matters of marriage and divorce in regular courts. The case also led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which mandates that a divorced woman is entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband. The Act aimed to address the rights of Muslim women who have been divorced and to ensure that they receive adequate provision and maintenance during the iddat period.

The Muslim Women (Protection of Rights on Divorce) Act, 1986, protects the rights of Muslim women who have been divorced by, or have obtained a divorce from, their husbands. The key provisions of the Act include:

1. **Maintenance and Provision:** The Act mandates that a divorced woman is entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband.
2. **Children's Maintenance:** The Act also provides that where the divorced woman herself maintains the children born to her before or after her divorce, the husband is responsible for providing maintenance for the children.
3. **Option to be Governed by Other Provisions:** The Act allows the divorced woman to opt to be governed by the provisions of Sections 125 to 128 of the Code of Criminal Procedure, 1973, which pertain to the order for maintenance.

The Act was enacted to address the rights of Muslim women who have been divorced and to ensure that they receive adequate provision and maintenance during the iddat period³⁷.

³⁶ Philips, A. (2011). Sharia and Shah Bano: Multiculturalism and Women's Rights. *Anthropologica*, 53(2), 275–290. <http://www.jstor.org/stable/41473879>

³⁷

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

III. MAINTENANCE UNDER LIVE-IN-RELATIONSHIP

There is no specific law regarding maintenance in live-in relationships in India. However, the courts have recognized the right of a woman in a live-in relationship to receive maintenance from her partner if certain conditions are fulfilled. In the case of *Badri Prasad v. Dy. Director of Consolidation*³⁸, the Supreme Court held that a woman in a live-in relationship is entitled to maintenance if she has been living with her partner as his wife for a reasonably long period and has been treated as such in society. The court also held that the duration of the relationship is not the only criterion for determining the right to maintenance, and other factors such as the nature of the relationship, the financial dependence of the woman, and the existence of children may also be considered.

In another case, *D. Velusamy v. D. Patchaiammal*³⁹, the Supreme Court laid down certain conditions that must be fulfilled for a relationship to be considered a live-in relationship. These conditions include:

1. The couple must hold themselves out to society as being akin to spouses.
2. They must be of legal age to marry.
3. They must be otherwise qualified to enter into a legal marriage, including being unmarried.
4. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

The courts have also held that a woman in a live-in relationship is entitled to claim maintenance under Section 125 of the Code of Criminal Procedure if she fulfils the conditions laid down in the *Badri Prasad* case.

In the case of *Lalita Toppo vs State of Jharkhand*⁴⁰, the Supreme Court of India observed that a live-in partner can seek maintenance under the provisions of the Domestic Violence Act, 2005. The Court also held that a partner in a living-together relationship can seek relief under the Protection of Women from Domestic Violence Act, 2005. The Court dismissed the appeal and directed the appellant to file a complaint with the appropriate body under the Domestic Violence Act. The case dealt with the issue of whether a live-in partner is entitled to maintenance under the Domestic Violence Act, 2005. The Court concluded that a live-in partner will be obligated

³⁸1978 AIR 1557

³⁹AIR 2011 SUPREME COURT 479

⁴⁰(2019) 13 SCC 796

to even more relief than that envisaged by Section 125 of the Code of Criminal Procedure, 1973.

a. When a wife is not entitled to claim Maintenance

A wife may not be entitled to claim maintenance under certain circumstances. Some of these circumstances include:

1. **Desertion:** If the wife has deserted her husband without any valid reason, she may not be entitled to maintenance, as observed in the case of *Mohan Kumar v. State of Karnataka*⁴¹.
2. **Living in adultery:** If the wife is living in adultery, she may not be entitled to claim maintenance, as per Section 5 of the Hindu Marriage Act.
3. **Capability to earn:** If the wife is capable of earning and able to maintain herself, she may not be entitled to claim maintenance.
4. **Personal maintenance statute:** If the husband is unable to maintain the wife, the court may order the wife to pay back the maintenance amount received from the husband under personal maintenance statutes.

Section 125(4) of CrPC also provides certain conditions where a wife will not be eligible to claim maintenance as it states ‘that no wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent⁴²’.

b. Cancellation of Maintenance

An order of maintenance can be cancelled by the court by passing an order of termination of maintenance. The cancellation of maintenance can occur under certain circumstances:

1. Living in adultery: If the wife is living in adultery, she may not be entitled to claim maintenance
2. Living separately without sufficient cause: If the wife is living separately from her husband without a valid reason, she may not be entitled to claim maintenance.
3. Professionally qualified wife-Capable of earning: If the wife is professionally qualified and capable of earning, she may not be entitled to claim maintenance.

⁴¹ More, D. (2023a) *Interim maintenance under Section 125 of CRPC*, lawyersclubindia. Available at: <https://www.lawyersclubindia.com/articles/interim-maintenance-under-section-125-of-crpc-15604.asp> (Accessed: 02 September 2024).

⁴² Specs, L. (2023) *Maintenance under section 125 of CRPC*, LinkedIn. Available at: <https://www.linkedin.com/pulse/maintenance-under-section-125-crpc-legal-specs/> (Accessed: 02 September 2024).

4. Separated by mutual consent: If the couple has been separated by mutual consent, the wife may not be entitled to claim maintenance.
5. Earning wife: If the wife is earning enough to maintain herself, she may not be entitled to claim maintenance.

If the following grounds satisfies the court then The court may order the cancellation of maintenance under Section 127 of the Code of Criminal Procedure (CrPC) in specific cases, such as when the paying spouse has stopped providing maintenance without any valid reason. However, the court emphasized that the maintenance under Section 125 CrPC is payable from the date of order, or if so ordered, it can be from the date of application, and the order of cancellation always operates prospectively and not retrospectively.

IV. CONCLUSION

Finally, this critical analysis offers a thorough investigation of the maintenance statute in the context of the Indian Administration of Justice System. Maintenance is an essential mechanism that keeps vulnerable members of society from becoming homeless or vagrants. It is firmly anchored in the constitutional requirement of ensuring social fairness.

The study makes its way through the legal system, clarifying the goals of maintenance as stated in several personal laws, including those that are secular, Muslim, Christian, and Hindu. It highlights how social views on the rights of women, children, and parents are changing and how moral and legal responsibilities overlap.

Most importantly, the study recognises the dynamic character of modern relationships and the need for legal recognition and protection by addressing maintenance in live-in relationships outside of the framework of traditional families. The legislative measures addressed, such as the Code of Criminal Procedure Amendments, the Maintenance and Welfare of Parents and Senior Citizens Act, and the Protection of Women from Domestic Violence Act, demonstrate the legal system's multipronged approach to addressing the various facets of maintenance.

Moreover, the analysis of pivotal judicial rulings, like the Shah Bano case, highlights the revolutionary function of legal manoeuvres in moulding women's rights, specifically in the context of personal laws.

The importance of maintenance laws in advancing social fairness and equity is reaffirmed in the paper's conclusion. These laws are always changing, as seen by judicial interpretations and revisions, which shows that the legal system is responsive and works to accommodate changing social norms while maintaining the values of justice and protection for all of its constituents.

The concepts of maintenance will continue to be essential in promoting a just and equitable society as India's legal system develops.
