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Gender Neutral Maintenance Law: Comparative Public Law Analysis

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ABSTRACT

The topic of gender-neutral maintenance legislation is increasing in India due to the transformation in social roles and the provisions of such laws that promote inequality. The patriarchal societies provided women with more protection under maintenance law, and this has now excluded men and the LGBTQ+ community. Up-to-date academic literature concentrates on the problems of women and excludes the comparative analysis and coverage. These gaps will be filled in the present study that will analyze the current push by having a gender-neutral framework in India, just like the U.K. and U.S. We contrast academic and comparative statutory provisions in each country and analyze them by statistically reviewing requirements of the constitution and court judgments. Findings indicate that although there are cases in which gender-neutral court decisions in India have been made to either allow maintenance to daughters or to dismiss fanciful claims, the legal system is gendered. The UK and the US are less biased in gender, having legalized same-sex marriage, maintenance rights to all marital partners, and limited lifetime reliance to facilitate autonomy. This research pinpoints the Indian secular law provisions on both genders of males and females and those of the LGBTQ+ as lacking gender neutrality. The study is the only one that incorporates historical rationale, constitutional equality and comparative analysis to demonstrate urgency in the reforms. The research can be used to further research and reforms beyond the Uniform Civil Code although it can only be restricted to doctrinal and comparative studies.

Keywords: *Gender-neutral, Social role, Patriarchal societies, LGBTQ+ population, Comparative analysis, Same-sex marriage, Uniform Civil Code*

I. INTRODUCTION

A comparative approach to public law concerning the UK and US. Public law maintenance transcends immigration law to include social equality. Family maintenance law represents a crossroads of social justice, law, and constitutional principles. Maintenance laws historically provide more protection to female relatives to guarantee their welfare and security. Maintenance law includes financial support for spouse, children, and dependent parents who cannot support

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themselves. Social functions have changed dramatically. Today, women work alongside men, attaining financial independence through educational opportunities and careers in armed forces. The notion that women will always be dependents and men providers is obsolete, requiring maintenance law to be gender neutral and preserve financial rights irrespective of gender. The legal structure of maintenance in India has many issues to resolve.

First, there is no singular maintenance law in the literature. Different personal laws apply to religious communities: Hindus, Muslims, Christians, Parsis. Also have secular laws those laws overlapping regimes create unequal access to remedies for victims.

Second, the misuse of provisions, notably “section 498a of the IPC²”, remains a concern despite committees addressing this issue.

Thirdly, the maintenance clauses are dominated by the man–woman understanding, violating constitutional pledges. “Article 14 guarantees equality before law and equal protection of law, and article 15 criminalises discrimination on grounds of religion, race, caste, sex or birth”. These codes rarely take LGBTQ+ people’s rights or needs into consideration, and therefore leave this community widely unprotected under the law.

Scholars have analysed the gender-neutral maintenance laws using the binary of male and female underpinning them, in doing so neglecting LGBTQ+ angles on these laws. This research takes the broader view, and it makes a comparison of maintenance laws in India, UK and US. It considers the effect of case law on gender-neutral maintenance schemes. This paper also analyses the contemporary position of the LGBTQ+ community in respect of their maintenance rights in India, the UK and US and underlines jurisprudence gap that still exists in India.

Literature Review

Poonam Pradhan Saxena (2003)³ gently offers a critical analysis of the Indian matrimonial legislation, exposing how the deep-seated patriarchal structures and judicial prejudices are expanding upon Equality is a fundamental component of the constitution, which is why it is regarded as a cornerstone of the institution.. This discussion points out the unstable situation of women in marriage relations and the insufficiency of law solutions like the restitution of conjugal rights. Nonetheless, the study's scope is restricted by its historical context, narrow focus on the dynamics between husbands and wives, and omission of contemporary issues such

² LiveLaw News Network, “For Every Instance of S.498A IPC Misuse, There Are Hundreds of Genuine Domestic Cruelty Cases: Supreme Court” LiveLaw (24 April 2025) (India), available at: <https://www.livelaw.in/top-stories/for-every-instance-of-s498a-ipc-misuse-there-are-hundreds-of-genuine-domestic-cruelty-cases-supreme-court-290211>.

³ Poonam Pradhan Saxena, “Matrimonial Laws and Gender Justice,” 45(3/4) JILI 335 (2003).

as LGBTQ+ rights, cohabitation, and comparative legal analyses from other jurisdictions. This, therefore, leaves a research gap in the existing studies relating the laws of maintenance to constitutional equality.

Rashmita Rana (2023)⁴ explores the need of a gender-neutral regime to be implemented in the Indian maintenance laws with reference to the “section 125 of the criminal procedure code (CrPC)”. This question examines the complexities of maintenance especially within the moral of restructuring the family formations like cohabiting and challenges the constitutionality of the “Section 125 with regard to the principles of gender equality and secularism embedded in the Constitution of India”. The main lack of the research is the constant use of gender-conditioned terms, where wives have the majority by all means; therefore, it is hard to provide equity and impartiality in the language employed. The weakness of the research is that it highlights the problem and identifies the changing sociocultural environment, but it fails to provide a wholesome framework on the comparison of solutions to implement gender-neutral maintenance laws.

Ragha Sudhan S (2023)⁵ in the article entitled Gender Bias and Maintenance Laws in India, uses the Family Law by Paras Diwan, Mulla Hindu Law, and new periodical critiques of the “Section 125 of the Criminal Procedure Code (CrPC)”. to explain the patriarchal nature of Indian maintenance legislation and propose gender-neutral changes. The paper highlights the ways in which the existing legal systems benefit wives and deny husbands their rights; hence, gender discrimination continues to exist. Nevertheless, this study has failed to address some issues: it does not discuss what happens to husbands in the secular laws, including the Special Marriage Act, and it does not include detailed discussion on the challenges of the practical implementation, and the study does not give empirical evidence about the alleged misuse of laws by women. It also fails to comprehensively discuss the socioeconomic elements that affect dependency, or it does not do the comparative legal evaluation with the rest of the jurisdiction. These loopholes show that more detailed, empirical, and comparative analysis of the maintenance laws in a gender-neutral approach is needed.

Disha Sivakumar (2025)⁶ provides a critique of the various maintenance legislation in India citing the biasness of such laws and recommends changes to the legislation to make it gender neutral. This paper provides an analysis of several of these personal laws such as the Hindu and Muslim and Christian and Parsi laws, and the Section 125 of the CrPC. Though the laws have

⁴ Rashmita Rana, “Maintenance; Exploring the Need for a Gender-Neutral Law,” 12(11) IJSR 1526 (Nov. 2023).

⁵ S. Ragha Sudhan, Gender Bias and Maintenance Laws in India (2 Jan. 2023), SSRN.

⁶ Disha Sivakumar, “Maintenance Laws in India and Gender Inequality,” 6(6) IJLMH 720 (2023).

been used in the past to aid women as one of the disadvantaged groups, they are now playing a role in the suppression of men unintentionally in some situations. In this study, the adoption of a “Uniform Civil Code (UCC)” is suggested as an overall way of simplifying the maintenance provisions and eliminate gender injustices. Nevertheless, the paper does not demonstrate the empirical research on the practical implications of such laws on the male gender and provides little quantitative information and takes the UPC as the only solution without further references to alternative or gradual reform approaches.

Dr. Santosh Kumar (2025)⁷ highlights the need to have gender-neutral family laws in India by giving a critical analysis of the various system of personal laws that is based on religious beliefs as long as they often support gender discrimination and patriarchal paradigm. This study lends support to inclusive and equitable reforms that will conserve the rights of everybody regardless of his or her gender or sexual orientation. Though there is no clear research gap presented in the manuscript, one may expect that the main gap is the simple fact that “the role of gender neutrality in the Indian family law” has not been thoroughly explored yet and there are no concrete ways of reforming it. One of the weaknesses of this research is the fact that although it recognises some intermittent judicial interventions and limited progress in legislation development, it does not give a complete model of reform implementation, hence.

The current researchers do not miss any significant number of relevant problems but also provide an analytical framework; nevertheless, there is a certain gap that several scholars have not fully considered as they have conducted comparative studies, constitutional rights, living partnership, rights of LGBTQ+, practical guidelines, and mostly focusing on the spousal issues. The research is based on comparative research design, comparison being done between the legal system of India and that of the US and the UK to explain the typical examples of this maintenance system that is gender oriented as well as uttering different cases and judicial interpretations. In addition it also examines the possible abuse of the law, especially the “Section 498A of the IPC (currently Section 83 under the BNS)” and other gender discriminatory laws, including, “Section 125 of the CrPC (BNSS Section 144)”. Also, the emergent topics, such as LGBTQ+ rights and live-in relationships, are mentioned in this paper, and the study highlights the constitutional and linguistic requirements of gender-neutral laws writing. This work plays a great role in the normative and practical aspects of the debate on “the reform of the family law in India”.

⁷ Santosh Kumar, “Gender-Neutral Family Laws in India: A Step Towards True Equality,” 2(6) *Infinite* 103 (June 2025).

II. ANALYSIS AND DISCUSSION

A. Indian Framework

The legal environment of India in terms of maintenance is characterized by its pluralistic feature, which is a combination of personal laws that are in parallelism with a secular provision. Such diversity results in a continuum of overlapping and often discordant consequences.

(a) Statutory Framework

- Vedic period: During this period, women experienced significant freedom and respect in society. Notably, figures such as Gargi, Maitreyi and Lopamudra were esteemed as philosophers⁸, while on that time man and woman was equal. Women during the early Vedic period enjoyed equal status with men in all aspects of life. workshop by ancient Indian essentials similar as Patanjali and Katyayana suggest that women were educated in the early Vedic period⁹.
- After Vedic Period: After the Vedic era, after the Turkish and Afghan rule, women were subjected to a slow sketching of their rights, where their access to an education and independence was limited. Such values like Parda Pratha also developed during the Mughal period, and society grew closer to the patriarchal rules. Customs like Sati Pratha and Bal Vivah (child marriage) came about over the decades leading to women being in a very dependent position of men to survive¹⁰.
- Colonial Period: During the colonial era, the British took initiatives to end social evils such as the removal of Sati Pratha in 1829¹¹, child marriage, referred to as Bal Vivah, which was the subject of the “Child Marriage Restraint Act 1929¹²”. They also passed the “Section 488 of the Criminal Procedure Code of 1898” to concentrate on funding of wives, children and parents¹³.
- Post-Independence: “The Code of Criminal Procedure (CRPC) replaced Section 488 with Section 125” in order to have a secular legal system. In spite of that, this section

⁸ available at <https://cultureandheritage.org/2024/02/the-role-of-women-in-vedic-rituals-investigating-their-participation-and-significance.html> (last visit sept. 21,2025)

⁹ Women’s Rights in India: Historical Overview, Wikipedia, available at: https://en.wikipedia.org/wiki/Women%27s_rights (last visited Sept. 22, 2025).

¹⁰ Nisha Singh, "Women Education Under the Reign of The Mughal Empire," *Cognizance Journal of Multidisciplinary Studies*, Vol. 4, Issue 9, September 2024, pp. 1-2.

¹¹ Bengal Sati Regulation, 1829, enacted by Lord William Bentinck (prohibiting Sati Pratha), available at: https://en.wikipedia.org/wiki/Bengal_Sati_Regulation%2C_1829 (last visited Sept. 22, 2025).

¹² Child Marriage Restraint Act, 1929, enacted by the Imperial Legislative Council, available at: https://en.wikipedia.org/wiki/Child_Marriage_Restraint_Act (last visited Sept. 22, 2025).

¹³ Criminal Procedure Code, 1898, Section 488 (maintenance of wives, children, and parents), available at: <https://www.pljlawsite.com/html/Crpc488.htm> (last visited Sept. 22, 2025).

dealt largely with guarding the rights of wives, including the divorced ones, and children and parents¹⁴.

- The Act included sections “24 and 25 of the Hindu marriage act” on the inception of the Act, which are “section 24 and 25” of the acts on May 18, 1955. This was followed by the introduction of “Hindu Adoption and Maintenance act 1956” succeeding Hindu Marriage Act. This is one of the legislative initiatives, the Hindu Code Bill, that was done under the Jawaharlal Nehru regime in order to reform the Hindu Personal Law¹⁵.
- The Shah Bano case of 1985 was a highly momentous decision by the Supreme Court when “Muslim Woman (Protection of Rights on Divorce) Act 1986” was enacted¹⁶.
- In the latter 1970s and 1980s, the number of dowry-related deaths and cruelty grew. The government responded by creating a “section 498A of the Indian Penal Code (IPC)” in 1983 that made cruelty by husbands or relatives (marital) a criminal offense¹⁷.

Critical Observation

In the past, the maintenance laws were made to promote care, protection and dignity of women. These other laws which afford extra protection to women bear no infringement to the “Indian Constitution”. “Article 14 of the Constitution” promotes equal protection under the law hence reasonable discrimination is allowed. Moreover, Article 15(3) gives the state the right to make law targeted at protecting women and children. But it is necessary in the modern society to revise the maintenance laws to allow gender neutrality. The need to change is supported by such cases like the Atul Subhas case on suicide (2024) and the case concerning the owner of Bakery in Delhi known as Punnent Khurana (2024) that has indicated the evolving of the social standards in India.

(b) Judicial Developments

b.1 Woman’s Rights Expansion

- Mohd. Ahmed Khan v. Shah Bano Begum (1985)¹⁸: This case was overriding judicial ruling that enhanced the rights of divorced Muslim women to maintenance as provided

¹⁴ Mohd Abdul Samad v. State of Telangana, 2024 SCC OnLine SC 1686, available at: <https://www.sconline.com/blog/post/2024/07/11/divorced-muslim-woman-can-seek-maintenance-under-section-125-crpc-supreme-court-2/> (last visited Sept. 22, 2025).

¹⁵ Hindu Adoptions and Maintenance Act, 1956, available at: https://en.wikipedia.org/wiki/Hindu_Adoptions_and_Maintenance_Act,_1956 (last visited Sept. 22, 2025).

¹⁶ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 3 SCR 844, available at: <https://indiankanoon.org/doc/823221/> (last visited Sept. 22, 2025).

¹⁷ Indian Family Lawyers - Complete Journey Of 498a IPC <https://share.google/prMIwnwRnFQRb2Yr7> (last visit sept. 22, 2025)

¹⁸ Mohd. Ahmed Khan v. Shah Bano Begum & Ors., (1985) 2 SCC 556 (SC).

under Section 125 that stressed constitutional equality over the provisions with the provisions of personal law. This historic judgment resulted in the establishment of “Muslim women (protection of rights on divorce) Act of 1986”.

- *Danial Latifi v. Union of India* (2001)¹⁹: The court wrote that responsibilities of Muslim husbands under the “Muslim Women (Protection of Rights on Divorce) Act, 1986”, are not constrained at the iddat period. He must be able to provide maintenance on his spouse.
- *Anju Garg v. Deepak Kumar Garg* (2022) and *Rina Kumari v. Dinesh Kumar Mahto* (2025)²⁰: In such case, the husband has the capacity to earn money and it therefore devolves on him to support himself by investing in all these.

b.2 Parental

- *Vijaya Manohar Arbat vs Kashi Rao Rajaram Sawai and Anr* (1987)²¹: The Supreme Court in this case held that as per the provision of the Criminal Procedure Code with reference to Section 125, daughters owe a similar obligation of maintenance to their parents. This interpretation made by the Court argued that the word his ought to have an inclusive meaning to include her thus suggesting that parents have a right of seeking maintenance both of their sons and daughters.

b.3 Misuse Concerns

- *Sushil Kumar v. UOI* (2005)²²: Indeed, the constitutionality of “Section 498A of Indian Penal Code” was upheld by the Supreme Court of India but there is concern about its misdemeanour. The Court observed that the deadly Section 498a which was created as a protective action was being manipulated as a weapon instead of being used as a shield as it was initially designed.
- *Rajesh Sharma v. State of UP* (2017)²³: The courts in this case considered the misdemeanours related to “Section 498a of the Indian Penal Code”, and thus, the court established that the misdemeanours of the IPC 498a do not have a resolution without having an organization set in place like a Family Welfare Committee.

¹⁹ *Danial Latifi v. Union of India*, (2001) 7 SCC 740 (SC).

²⁰ *Anju Garg v. Deepak Kumar Garg*, (2022) 7 SCC 740 (SC).

²¹ *Dr. (Mrs.) Vijaya Manohar Arbat v. Kashi Rao Rajaram Sawai and Anr.*, (1987) 2 SCC 278 (SC).

²² *Sushil Kumar v. Union of India*, (2005) 6 SCC 123 (SC).

²³ *Rajesh Sharma v. State of U.P.*, (2017) 8 SCC 489 (SC).

b.4 Scope of Maintenance

- *Manish Jain v. Akanksha Jain* (2017)²⁴: The Supreme Court has made a neutral decision according to which in case of one of the spouses being educated, she cannot claim maintenance. Those individuals requiring assistance are assigned to maintenance.

b.5 Determination of Quantum

- *Rajnesh v. Neha* (2020)²⁵: The court made it clear that both the parties must produce an affidavit that will indicate their assets and liabilities in determining the accurate amount of maintenance that will be granted.

b.6 Live-in Relationship

- *Chanmuniya v. Virendra Kumar Singh* (2010)²⁶: In this specific case, the Supreme Court stated that in case two adults entered into a cohabitation arrangement, the female partner may demand the provision of financial assistance following “Section 125 as well as Section 26 of the Domestic Violence Act” subject to the nature of the live-in relationship which appears to be similar to the marital relationship. Nevertheless, in this regard, the Court tabled some guidelines that indicate that there should be a decent time of living together, sharing of domestic resources, presence of a domestic relationship that is not underground and the knowledge of the society that they are in partnership; upon such guidelines, the female partner is supposed to make a claim as regards his or her maintenance.
- *Indra v. VKV Sarma* (2013)²⁷: The Court held that not every cohabitation agreement should be subjected to maintenance. To have maintenance, a woman must substantiate that the relationship is that which is in the nature of marriage. In case the male partner is already legally married, the relation cannot be considered marriage-like and, therefore, the woman cannot be provided with maintenance.

b.7 LGBTQ

- *National Legal Ser.Auth vs Union of India & Ors* (2014)²⁸: In this case supreme court legally recognized LGBTQ+ community as a third gender

²⁴ *Manish Jain v. Akanksha Jain*, (2017) 15 SCC 801 (SC).

²⁵ *Rajnesh v. Neha*, (2021) 2 SCC 324 (SC).

²⁶ *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141 (SC).

²⁷ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755 (SC).

²⁸ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438 (SC).

- Navtej Singh Johar vs Union of India (2018)²⁹: The Supreme Court struck down “Section 377 of the Indian Penal Code” to the degree where it criminalized consensual same-sex adult relationships. The Court concluded that sexual orientation was an inherent element of personality and dignity to which protection was guaranteed by “Articles 14, 15, 19, and 21 of the Constitution”.
- Supriya Chakraborty vs Union of India (2023)³⁰: The Supreme Court of India has said that it will not grant same-sex marriages the status that is in the current laws of the country. According to the arguments of the Court, the right to marry is not a fundamental right, even though the Constitution provides the right to choose a partner and refers to the idea of dignity and non-discrimination in LGBTQ+ individuals. It also underscored the fact that the power to legalize marriages of same sexes is vested in the Parliament and the State Legislatures and not the judges.

b.8 Recent Trends and Expansions

- Priyanka Nayak v. Pranaya Pradhan (2025)³¹: The spouse in this case is aggressively being behaved towards by her partner because of his physical handicap therefore the orissa high court has ruled that such behaviour is cruelty which is not allowed to either partner under “section 13 of the Hindu marriage act”. The wife therefore is not entitled to any maintenance.
- Wife demands luxury flat, 12th crore alimony, and BMW (2025)³²: The case already has created massive publicity where the wife wanted a luxury apartment, BMW and 12 crore as alimony. The Supreme Court rejected her claims to 12 crore and the BMW claiming that there were unreasonable and unjustified. The Court ordered the husband to give the wife a settlement of 4 crore in the form of an apartment in Mumbai which was to be transferred to the wife in a holistic and final settlement. The Court explained that the

²⁹ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (SC).

³⁰ Supriyo @ Supriya Chakraborty v. Union of India, Writ Petition (Civil) No. 1011 of 2022, decided on 17 October 2023, Supreme Court of India.

³¹ Priyanka Nayak Pradhan v. Pranaya Pradhan Nayak, MATA No. 264 of 2023, Orissa High Court, decided on 5 May 2025.

³² Techie Wife Seeks ₹12 Crore Alimony and BMW to End 8-Year Marriage; SC Tells Jobless Husband to Gift ₹4 Crore Flat Instead, The Economic Times, 6 Aug. 2025, available at <https://economictimes.indiatimes.com/news/india/techie-wife-seeks-12-crore-alimony-and-bmw-to-end-8-year-marriage-sc-tells-jobless-husband-to-gift-4-crore-flat-instead/articleshow/123141366.cms>. (Last visit sept. 22, 2025)

SC Grants Rs 4cr Mumbai Flat as Alimony, Rejects Rs 12cr & BMW Demand, The Times of India, 6 Aug. 2025, available at <https://timesofindia.indiatimes.com/india/sc-grants-rs-4cr-mumbai-flat-as-alimony-rejects-rs-12cr-bmw-demand/articleshow/123127259.cms>. (Last visit sept. 22, 2025)

wife being a highly educated and employable female could not rightfully argue disproportionate maintenance. The sole compensation that was given to her was therefore the 4 crore apartment, no other compensation was awarded. Moreover, the Court added that the wife having educational qualification should seek a job as it was in her interest. This ruling demonstrates the shift of focus in the Court to consider not the gender but the ability of that individual to sustain herself.

Critical Observation

Analyzing several cases, one can notice that not always the legal systems are gender biased. The approaches and conclusions of judicial interpretation and rulings are often gender-neutral, and it is important to note that even men are subject to harassment. However, even though the gender-neutral verdicts are widespread, the relevant law changes have not been made.

B. United Kingdom Framework

(a) Statutory Framework

- The Matrimonial Causes Act 1973³³: aids the courts in making the so-called financial orders during the proceedings concerning the divorce or separation of the parents. Under Section 25 of the Act, the judges are obligated to put into consideration numerous factors that include:
 - The revenues, earning capacity and financial needs of both parties concerned.
 - The quality of life experienced in the marriage.
 - The contributions made by both spouses including the non-financial contributions like domestic work.
 - The marriage life period and the age of the partners.
- The Child Maintenance Service (CMS)³⁴: The CMS is a statutory service which is a calculation of child maintenance based on a formula. In case of parents not agreeing, they have to request CMS to have maintenance. There is a PS20 application fee with the exemptions of domestic abuse victims and those that are under 18. In the case of CMS applications, the parents and the child have to be located in UK. The child should have been qualifying - below 16 or 16-19 years of full-time non-advanced education. CMS

³³ The Matrimonial Causes Act, 1973, s. 25.

³⁴ The Child Maintenance Service, Government of [Country], available at <https://www.gov.uk/child-maintenance>. (Last visit sept. 22, 2025)

ensures a working maintenance of the gross income of the paying parent number of children and days of care.

(b) Judicial Development

b.1 Child Maintenance

- *Re P (A Child)* [2003]³⁵: It has been recognized as a landmark ruling in relation to “Schedule 1” claims in relation to the ruling of the court that children born to unmarried children deserve fair treatment regardless of their economic status even of the wealthy type. This is a common case that is referred to because of its principles on the childcare, financial allowances and housing provisions via settlements. It is especially interesting that both parents are found guilty of taking care of the child, i.e., there is a gender-neutral perspective, where the child should be taken as the main value instead of parental position.

b.2 Balancing Needs and Self-Sufficiency

- *Mills v. Mills* (2018)³⁶: The question that the UK Supreme Court investigated was whether a spouse was able to claim the augmentation of maintenance payments in order to find a new solution to the financial burden of the house, when they had previously been fulfilled by some prior capital settlement. The Court ruled that where a capital settlement has served particular requirements, e.g. housing, the recipient spouse will not be able to in future demand the same requirements be met by augmented payments of maintenance. This decision stresses the rule that capital settlements are supposed to be final and all-inclusive and that maintenance payments are not supposed to supplement or substitute capital provisions.
- *Waggott v. Waggott* (2018)³⁷: The Court of Appeal in the case found that a spouse cannot get lifetime maintenance when he or she has already taken substantial capital settlement. The court also made this clearer that future earning is not a matrimonial property and that maintenance is meant to create loose end allowing individuals to become financially independent not financially dependent.

Critical Observation

Both men and women in the United Kingdom are given the chance to pursue maintenance without hindrances and In the United Kingdom, same-sex marriage is legal in all regions though

³⁵ *Re P (A Child)*, [2003] UKHL 8, [2003] 2 AC 180 (HL).

³⁶ *Mills v. Mills* [2018] UKSC 38

³⁷ *Waggott v. Waggott*, [2018] EWCA Civ 1234.

legalization of the practice came in March 2014 in England and Wales, in December 2014 in Scotland, and in January 2020 in the Northern Ireland. In the UK, the maintenance law is always gender-neutral and this applies to people of LGBTQ+. When compared to India, UK law has a greater inclusivity with some exceptions: in the UK, parents in general have no right to claim maintenance, however, in India, in case of certain conditions, a parent can claim maintenance offset. This comparison highlights the scope and limitation of maintenance provisions relative to each of these two jurisdictions.

C. United States Framework

(a) Statutory Framework

Alimony is a state regulation in the United States, but the majority of states follow some common principles:

- The awards might be temporary, rehabilitative awards and permanent awards.
- Some of the judicial considerations are the number of years of marriage, earning capacity, age, health, and contribution of individual spouses.
- Laws are technically gender-neutral, and any of the spouses can request maintenance.

(b) Judicial Developments

b.1. Constitutional Mandate for Neutrality

Orr v. Orr, 440 U.S. 268 (1979)³⁸: A law was declared in Alabama requiring only husbands to pay alimony invalid and the Supreme Court found that statutes that affect genders went against the Equal Protection Clause of the Fourteenth Amendment. The decision was a historic one that required the state statutes to be changed so that it gender-neutral.

Obergefell v. Hodges (2015)³⁹: The case is one of the milestones of the United States Supreme Court that made a statement in the right to marry to same-sex couples provided by the U.S. Constitution. This decision essentially declared the legality of same-sex marriage in the country and outlived all state-designated ban laws and obligated every state to accept same-sex unions that were lawfully conducted in other states.

b.2. State Level Application

Post *Orr* case: After the *Orr* case, many states were enacting limitations on permanent alimony and were biased towards rehabilitative awards so that economic independence could be

³⁸ *Orr v. Orr*, [1979] AC 145 (HL).

³⁹ *Obergefell v. Hodges*, 576 U.S. 644 (2015).

encouraged.

Modern statutes: Contemporary laws, including the California Family Code and the New York Domestic Relations Law, put an emphasis upon the principles of equitable distribution and short-term support which is a sign of the loss of dependency.

Critical Observations

The entity of neutrality is constitutional in the United States of America owing to the major judicial rulings, including *Orr v. Orr* and *Obergefell v. Hodges* has been playing a significant role in the development of gender-neutral legal systems. Following *Obergefell v. Hodges*, same-sex marriage was given legal recognition across all states. There is also no legal provision in both of the United States and the United Kingdom where parents can claim maintenance by their children.

D. Comparative Synthesis

India: The absence of the standardized civil court law in India is an issue. In the course of time, courts have sometimes made gender-neutral decisions and construed them against certain laws like in the case of section 125 of the Criminal Procedure Code (CRPC) it is now 144 BNSS. In spite of all these efforts, it has not undergone a complete legal reform. This leads to the fact that the LGBTQ community is still discriminated against on the legal level, despite receiving status of a gender officially.

UK: statutory basis is formally and formally neutral, with the courts taking fairness into consideration and exercising significant discretion. The recent case decisions of *Mills* and *Waggott* are a move towards decreasing cases of long term dependency. Also, inclusiveness has been rolled over to same sex spouses.

US: Since *Orr v. Construction* of court cases has required it to be constitutional neutral. *Orr* decision. Alimony is becoming more rehabilitative which is in tandem with the ideals of economic independence. Although the rights of LGBTQ+ have been completely accepted, there is still the existence of social-economic inequality based on gender.

III. FINDINGS

This paper set out to analyze the need to have gender-neutral maintenance laws by comparatively examining the case of India, the United Kingdom and the United States. The most significant results are:

1. Indian Law Preference Traditions in favor of women.

This study confirms some of the historical causes of why Indian maintenance laws have historically given women a greater support, due to their vulnerable status within the patriarchal society. This goes to the direct status of RQ1, as it proves the reason as to why women were given more rights under the Section 125 CrPC and personal laws.

2. Critiques about Judicial Interpretation and Misuse of section 498a

Patriarchy was not always the sole factor leading to judicial rulings; instead, misinterpretation of Section 498a IPC also affected judicial reasoning. In *Sushil Kumar Sharma v. The Court* stated that 498A was not to act as an offensive, but a protective tool (UOI, 2005). Similarly, in *Rajesh Sharma v. To curb abuse*, the Court came up with Family Welfare Committees (2017). This directly answers RQ2, showing that social misuse and not necessarily patriarchy sometimes influences judgments.

3. Efforts of the judicial system to become neutral.

Supreme Court cases show gender-neutral verdicts and decoded statutes. The *Vijay Manohar Arbiter* case clarified meaning, while *Sunil Kumar* case (2005) emphasized misuse of Section 498A IPC, meant as shield not sword. The family welfare committee formed per *Rajesh Sharma* case in 2017. In *Supriyo Chakraborty and Union of India*, it was stressed that power to legitimize same sex marriage lies with Parliamentary and Legislative bodies, not Judiciary. These developments show progress through judicial interpretations despite lack of legislative reform, answering RQ5.

4. Husbands under Secular Law.

There remains a big gap, as Hindu husbands can claim maintenance under Section 24 of Hindu marriage act whereas Muslim husbands cannot claim under section 125 CRPC (paying now 144 BNSS) and Muslim women (protection of rights on divine) act 1986. This state of affairs is unfavorable to Articles 14 and 15 since secular law is supposed to be neutral. This gap focuses on Research Question 4 (RQ4).

5. Ostracism of the LGBTQ+ Community.

When comparing LGBTQ public law in India, there is legal acknowledgment of the third gender represented by LGBTQ individuals. They are now denied the right to marry, halting their right to receive maintenance under legal provisions. In contrast, nations like the United Kingdom and United States allow gay marriages, giving gay and lesbian couples legal rights to maintenance and spousal benefits. This inequality highlights the legal disparity in India regarding equality

and protection of LGBTQ in marriages and families. This directly addresses RQ3.

6. Long-Term Maintenance vs. Economic Independence

Courts in the UK and US discourage long-term maintenance, favoring short-term or rehabilitative maintenance to encourage economic self-sufficiency (e.g., *Mills v. Mills* 2018, *Waggott v. Waggott* 2018, and post-Orr v. Orr reforms). In contrast, Indian courts still award long-term/lifetime maintenance where women are educated, employable and physically capable, encouraging dependency. This shows India lags behind global trends, though there are cases when the Supreme Court has denied maintenance claims. One such case was the judgment on a demand for a luxury flat, 12 crores in alimony, and a BMW by the wife. The Supreme Court affirmed that the wife based her case on being educated and employable to sustain such a maintenance award. This addresses RQ5, which points out the absencies in promoting financial independence.

7. Gender-neutral Maintenance Law “Implementation of a Uniform of civil Code”.

The adoption of a unified civil code in India faces major challenges owing to the religious diversity in India in terms of beliefs and practices. However, the implementation of the gender-neutral secular legal system would guarantee the protection of equal rights of all citizens, irrespective of their genders. One of them is the ruling by the U.S. Supreme Court on *Obergefell v. Hodges* (2015), which legalized same-sex marriage as the right in the Fourteenth Amendment. After this seminal ruling, same sex marriage was lawfully granted by all the 50 states. Equally, interpretation of statutes in the Indian context is very important in order to align the law with judicial reform. Addressing RQ6

IV. CONCLUSION

This paper shows that gender-neutral laws are supposed to cover not just two genders, men and women, but also homosexual group, which is legally classified as a third gender. This paper will also discuss why women have enjoyed more legal protection as a result of historical reasons. This research highlights the gradualism of adopting gender-neutral frameworks of maintenance in the UK and in the US through a comparative approach which is done using the public law. These models involve the acknowledgement of same-sex marriage, expansion of rights to maintenance to all marriage spouses, and the breakdown of what is a lifetime dependency to economic independence. On the contrary, although, in India, the judgment and interpretations of the law are biased toward gender neutrality, the legal structure is identical. As well, a standard civil law is difficult to enforce due to varying religious beliefs, which promptly brings out the significance of gender-neutral secular law. This paper mainly dwells on doctrinal

studies and comparative studies that do not include empirical or survey on socioeconomic and give precedence to judicial and statutory interpretations over different judicial views. This implies that more research on practical effects of maintenance law on men, women and LGBTQ+ persons is possible in the future literature and gradual reform strategies outside the UCC to make the system inclusive and equal.
