

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 5 | Issue 1**

---

**2022**

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for "free" and "open access" by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Maintenance: A Way of Social Justice to the Domestic Violence Victims in India

---

JASDEEP KAUR<sup>1</sup>

## ABSTRACT

*“The aged parents, a virtuous wife and an infant child must be maintained even by doing a hundred misdeeds”.*

– *Manu*

*Granting maintenance to an aggrieved wife is a proportion of civil rights without anyone else. It is a man's key obligation to maintain with his significant other, kids, guardians, close relations, and so on inasmuch as they can't maintain with themselves. This paper discusses the object of maintenance to forestall shamelessness and desperation and improve the financial state of ladies and kids. Maintenance law in India relating to Hindu females can be arranged into two sorts this paper puts the limelight on Right to Interim Maintenance this part of the paper includes Maintenance Pendente lite Maintenance for the widow. The principal type visualises maintenance following a separation, or another marital cure, for example, nullity of marriage in this part of the paper, concerning essential landmark judgments explains when a woman can get Alternate accommodation/ Right to separate accommodation. In the principal class, the maintenance can be asserted under Section 25 of Hindu Marriage Act 1955 and in the second class maintenance to a spouse, parent and youngsters under Section 125 of Cr.P.C. and Hindu Adoption and Maintenance Act, 1956. In this paper, an endeavour has been made to determine the nature and extent of maintaining a spouse, widow and ward under the Hindu Adoption and Maintenance Act 1956. Furthermore, this paper discusses Section 25 of Cr.P.C. Profoundly maintenance laws overseeing the top of the Hindu family, and adequate cures have been accommodated to something similar. This part of the puts limelight on the Indian Law And Objective And Scope Of Maintenance and discusses the Comparison Between Maintenance Laws Under Hindu Adoption And Maintenance Act 1956 And Cr.P.C 1973. The last part of this paper consists of Findings – suggestions, And Conclusion.*

---

<sup>1</sup> Author is a Pursuing PhD at Amity University Jaipur Rajasthan, India..

## **I. INTRODUCTION**

### **(A) Indian Concept Of Maintenance**

The Right to maintenance comes from the idea of an Undivided family, where the head of such family will need undoubtedly maintenance with the individual who isn't monetarily autonomous to make an appropriate living and equipped for partaking in the necessities of life that the person in question is sensibly anticipated to appreciate. The entire idea of maintenance was acquainted with making such individual living conceivable and autonomous. Maintenance is the obligation of an individual which he owes to his dependent family members by which both the individual and the property are bound. Under Indian law, the term ' maintenance ' incorporates a qualification to food, dress and sanctuary, commonly accessible to the spouse, kids and guardians. It is a proportion of civil rights resulting from a man's regular obligation to maintain with his significant other, kids and guardians when they can't maintain with themselves<sup>2</sup>. Maintenance has been a worry not only for the more fragile sections but also for the general public. At the point when one, regardless of having the adequate means, neglects to maintain his dependents then, at that point, such concerned people are compelled to fall upon the state for help or probably take a transporter disdained or disallowed by the general public which conflicts with the interest of the general public. Along these lines, in the affirmation of this and with the reason to forestall the results that might more often than not emerge out of neediness and desperation, a right, corresponding to one given under privacy laws, is additionally made accessible under Criminal Jurisdiction in India. The object of maintenance is to forestall indecency and desperation and enhance the monetary state of ladies and youngsters.

The people equipped for maintenance under the Hindu Adoptions and Maintenance Act (HAMA), 1956 are spouses, bereaved girl in-law, youngsters, matured guardians and dependents as specified in Section 21 of the Act. While, under the Muslim law, the people are entitled to maintain a spouse, small kids, the necessitous guardians, and other necessitous relations inside the denied degrees. The Muslim Law of maintenance depends on the individual Muslim laws and the law establishments, for example, the Indian Majority Act, 1875, the Criminal Procedure code 1973, Muslim Women (Protection of Rights on Divorce) Act, 1986. The Purpose of Section 125, Cr. P.C., 1973 apply and are to be upheld regardless of the individual law by which the people in India are governed<sup>3</sup>. Simultaneously, it should be

---

<sup>2</sup> A.I.R. 2005 SC 1809

<sup>3</sup> Nanak Chand v. Chandra Kishore, A.I.R. 1970 SC 446

perceived that personal laws of the gatherings concerned, Hindus, Muslims, Christians are to be appropriately minded of as the equivalent are vital to conclude the legitimacy of the marriage tie, if any, (existent or not) thus can't be saved from due consideration.<sup>4</sup>

## **II. MAINTENANCE UNDER HINDU LAW**

Numerous Hindu sages of Ancient India, including Manu and Brihaspati, were assessed that the maintenance of specific people is an individual commitment. "A man might give what stays later the food and attire of family. The one (provider) who leaves his family unfed may taste honey from the get-go; however, later finds it poison."<sup>5</sup> Mitakshara, one of the most significant and most established schools of Hindu Law, says that "Where there might be no property except for what has been self-gained, the main people whose maintenance out of such property is basic, are matured guardians, spouse and minor youngsters."

The Purpose of maintenance under Hindu law tracks down its underlying foundations in (a) the Shastric Hindu individual laws, which have hidden establishments in the Dharmashastra. With the entry of time, the requirement for the codification of Hindu Law concerning marriage, reception, progression and maintenance was felt, and in this way, two standard demonstrations (1) The Hindu Marriage Act and (2) The Hindu Adoptions and Maintenance Act, 1956 were proclaimed. Notwithstanding, Modern wellsprings of Hindu Law comprises of three fundamental sources, for example, (I) Equity, Justice and great still, small voice (ii) Points of reference (iii) Legislation. Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956<sup>6</sup> characterises support. This Section says, "Support incorporate (I) in all cases, arrangement for food, clothing, home, schooling and clinical participation and treatment, (ii) on account of an unmarried little girl, too the sensible costs of an episode to her marriage, (c) "minor" signifies an individual who has not finished their age of eighteen years." In *State of Haryana v. Smt. Santra*<sup>7</sup>, it was held that it is a responsibility made by Hindu Law and emerges out of the jural connection of the gatherings. Section 18 of the HAMA, 1956 Purpose with the maintenance and separate wife's home.

### **Right to Interim Maintenance**

The Interim Maintenance is payable from the date of a show of the request till the date of excusal of the suit or passing of the announcement to meet the immediate necessities of the

---

<sup>4</sup> *Yamunabai v. Anant Rao*, A.I.R. 1988 SC 644.

<sup>5</sup> Brihaspati, XV.

<sup>6</sup> Herein referred as "The HAMA".

<sup>7</sup> 6 (2005) 5 S.C.C. 182.

solicitors. In *Purusottam Mahakud v. Smt. Annapurna Mahakud*<sup>8</sup>, High Court held that the right to guarantee interval maintenance in a suit is a considerable right under section 18 of the Act. Though no law is endorsed to uphold the said right, a civil court can allow interim maintenance to exercise its intrinsic power.

### **Maintenance Pendente Lite**

Maintenance Pendente lite means relying upon the result of the case. The standard is simply later considering the monetary status of the spouse during the case interaction; the wife is granted Maintenance Pendente lite notwithstanding the way that there is no predetermined arrangement referenced in the represent the award of Maintenance Pendent lite. Separated from lady can guarantee maintenance as much as she keeps on partaking in the situation with a spouse. The spouse of the one who separated from her has a legal obligation to maintenance with her on the off chance that she cannot perform maintenance with herself and she stays unmarried<sup>9</sup>.

The commitment to maintenance with the spouse stays on the husband even though the wife may be living separately<sup>10</sup>. It is settled law that a court enabled to allow a considerable help is skilful to grant it on interval premise, even though there is no express arrangement in the resolution to award it.

### **Maintenance for Widow**

Widow has no charge on the independent property of the spouse. Neither Section 18 connecting with the maintenance of spouse nor Section 21 managing widow accommodates any charge for maintenance on the isolated property of spouse<sup>11</sup>.

### **Alternate Accommodation/Right to Separate Accommodation**

The spouse is entitled to live separately without waving her right to maintenance if her husband is guilty of desertion, if he does cruelty on his wife if husband is suffering from leprosy, if he has any other wife living, keeps a concubine in the house where he resides with his wife, if he has ceased to be Hindu, or if there is any other cause justifying her to live separately under Section 18(2) of the HAMA.

The spouse had been living alone, and every one of the youngsters had been raised by her with next to no help and help from the spouse, and there was a reasonable instance of renunciation;

---

<sup>8</sup> A.I.R. 1997 Ori 73.

<sup>9</sup> Rohtash Singh v. Smt. Ramendri, A.I.R. 2000 SC 1952.

<sup>10</sup> Meera Nireshwalia v. Sukumar Nireshwalia, A.I.R. 1994 Mad 168.

<sup>11</sup> Sadhu Singh v. Gurdwara Sahib Narike, A.I.R. 2006 SC 3282.

the wife was qualified for independent home and maintenance. The case for maintenance by a spouse can likewise be supported under proviso (g) even on a ground covered by one or different statements, for example, provision (a) to (f) of section 18(2) substantially but not entirely. Merely because the wife fails to strictly prove the specific grounds, she cannot be denied relief under the said acts.<sup>12</sup>

In **Rajesh versus Neha**<sup>13</sup> supreme court held that section 19 (1)(f) of the D.V. Act gives that the Magistrate might pass a home request entomb Alia guiding the respondent to get a similar degree of substitute convenience for the oppressed lady as delighted in by her in the shared family. While passing such a request, the Magistrate might guide the respondent to pay the lease and different instalments, respecting the monetary necessities and assets of the gatherings.

### **Maintenance to Widowed Daughter in Law**

Section 19 of the HAMA explains that a widowed daughter-in-law is entitled to be maintained by her father-in-law. In *Raj Kishore Mishra v. Meena Mishra*<sup>14</sup>, it was held that where the daughter-in-law can maintain herself from the parents' estate, the father-in-law's question does not arise. Section 20 of HAMA obligates the head of the Hindu Family to maintain the children and the aged and the old parents. Here, the father and the mother are also obligated to maintain them. Section 22 of the Hindu Adoption and Maintenance act obligates the head of the Hindu Family to maintain his dependants, which is defined under section 21.

The Purpose under the Code of Criminal Procedure, 1973<sup>15</sup> ties an individual to play out the honest conviction that he is compelled by a solemn obligation to the general public regarding his better half, kids and parents.<sup>16</sup> The obligation is by a long shot lawful and restricting upon the individual.<sup>17</sup> Provisions of CRPC are prevalent, innocuous and all-swarming in nature and are pertinent to all networks in India, regardless of religion, standing and belief. The Purpose of Section 125, CRPC, are enforceable anything that might be the individual law through which the particular people concerned are directed and administered<sup>18</sup>. Maintenance can be asserted under the particular personal laws of individuals adhering to various beliefs and procedures

---

<sup>12</sup> Meera Nirehwalia v. Sukumar Nirehwalia, A.I.R. 1994 Mad 168.

<sup>13</sup> *Rajesh Versus Neha* Supreme Court CRIMINAL APPEAL NO. 730 OF 2020

<sup>14</sup> A.I.R. 1995 All 70.

<sup>15</sup> Herein referred as "The CRPC"

<sup>16</sup> Section 125 of the CRPC provides "(1) If any person leaving sufficient means neglects or refuses to maintain- (a) His wife, unable to maintain herself, or (b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself or, (d) His father or mother, unable to maintain himself or herself."

<sup>17</sup> *Bhagwan Dutt v. Kamal Devi*, (1975) 2 S.C.C. 386.

<sup>18</sup> *Nanak Chand v. Chandra Kishore*, A.I.R. 1970 SC 446.

under such private laws are thoughtful, yet procedures stated under Section 125 of The CRPC in any case, are rundown and apply to everybody paying little heed to position, doctrine or religion.<sup>19</sup> Via an essential, rapid and compelling restricted alleviation, the arrangement remembered for section IX of The CRPC attempts to forestall the dismissed spouse, parent and youngsters (minor) from absolute penury also obliteration. Section 125 of the CRPC gives a rapid cure against starvation and common annihilation. It isn't likened to the common obligation of a spouse. It subserves an outline strategy absent a lot of intricacies. It gives impact to the essential thing obligation of a male individual to maintain with his significant other, youngsters and matured illuminate guardians having no pay off themselves. The essential thought behind the place of maintenance under Section 125 of the CRPC is that no spouse, minor kids, old guardians ought not without and capitulate to absolute tension of needs with the goal that they might need to be enticed to take response to violations, and so forth Arrangement under Section 125 of the CRPC approves a Magistrate of the First Class to take outline activity for anticipation of neediness.<sup>20</sup>

### **III. INDIAN LAW AND OBJECTIVE AND SCOPE OF MAINTENANCE**

The word "Maintenance" has not been characterised or defined in section IX of the Code of Criminal Procedure, 1973. The Purpose under section 125 of Chapter IX of Cr. P.C., 1973 supports civil rights, which was exceptionally sanctioned to shield the interests of ladies and kids, so additionally of old also decrepit guardians. Maintenance Purpose falls inside the ambit of Article 15(3) of the Constitution of India along with Articles 39, thereof. Section 125, Cr. P.C., 1973 gives that it is the crucial and regular obligation of an individual to maintain with his better half, kids and old guardians as long as they can't maintenance with them.

The object of Section 125, Cr. P.C., 1973 apply and are to be authorised independent of anything that might be the individual law by which the people in India are administered. All the while, it should be perceived that personal laws of the gatherings concerned, Hindus, Muslims, Christians are to be appropriately minded of as the equivalent are critical to conclude the legitimacy of the marriage tie, if any, (existent or not) thus can't be saved from due thought.<sup>21</sup>

The purpose behind Section 125, Cr. P. C., 1973 is focused on avoidance of starvation, desperation also vagrancy of the family members, close and far off, i.e., defendants who can't maintain with themselves. It is a proportion of civil rights exceptionally ordered to ensure

---

<sup>19</sup> Md. Ahmed Khan v. Shah Bano Begum, A.I.R. 1985 SC 945.

<sup>20</sup> Badri Narain v. Laxmi Gehlot, 2002 S.C.C. Online Raj 2009.

<sup>21</sup> Yamunabai v. Anant Rao, A.I.R. 1988 SC 644.

ladies, youngsters and old guardians. The chief object of section 125, Cr. P.C., 1973, is to give alleviation to abandoned what's more helpless spouses, ignored and disposed of youngsters and vulnerable, old, debilitated guardians. This arrangement in this way brings social assistance and social motivation behind prosperity. The ward of the Magistrate isn't reformatory or correctional obviously, preventive in nature. By giving a straightforward, rapid, restricted help, the tedious, extensive, irksome, weighty cycle of common law and suit were tried to be stayed away from impulse is (somewhat) forced upon those people whose obligation is to maintain with their defendants who can't maintain with themselves. No spouse, kid or parent can be left' beggared and penniless on the scarp-stack of society in order to be enticed to carry out wrongdoing or to entice others to perpetrate wrongdoing as to them.<sup>22</sup> One's obligation to maintain with his own better half and minor kids is a legal commitment, and a contract in opposition to the equivalent to forgoing the right totally can't be considered lawful<sup>23</sup>. The maintenance laws among various networks in India have been uniquely sanctioned to secure the more fragile sections of individuals, for example, to ensure ladies, youngsters, old and weak guardians, some close to relations which have no payment of their own and can't maintain with their occupation. Likewise, it might be exceptionally expressed that maintenance laws fall inside the protected ambit of Article 11 of 15(3)<sup>24</sup>. Maintenance provisions have been generally found to be in similarity with the Constitution of India is not violated of Article 14 and Articles 25 and 26 of the Constitution of India.

These provisions are planned to guarantee a social reason. Their article is to force a man to do the ethical constraints, which he owes to the general public on the loose regarding his significant other, youngsters, guardians. By arising a straightforward, rapid, restricted alleviation, these provisions look to guarantee that the disregarded helpless spouse and youngsters are not to become poor people and penniless on the garbage dump of society and are in this manner constrained to have an existence of vagrancy, violations and corruption for their simple means throughout everyday life. The inadequacy of the spouse, youngster, mother or father to keep up with themselves could prompt genuine social issues of extraordinary greatness. In such thought and unified cases, Parliament needed to devise an answer for this issue and consequently developed a synopsis methodology which got its place and expansion in section IX of the new Code of Criminal Procedure, 1973.

---

<sup>22</sup> Law Commission's 41st Report, ¶ 303.

<sup>23</sup> Haroon v. Sainbha Beevi Zeenath, A.I.R. 1994 SC 1456.

<sup>24</sup> Ramesh Chandra v. Veena Kaushal, A.I.R. 1987 SC 1807.



#### **IV. COMPARISON BETWEEN MAINTENANCE LAWS UNDER HINDU ADOPTION AND MAINTENANCE ACT 1956 AND CR.P.C 1973**

The right to maintain under section 125 of the CRPC is a legal right which the Indian Governing body has given, acknowledged and perceived independent of any religion of the gathering concerned, regardless of whether a Hindu or a Muslim and so on yet the provisions of Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 are appropriate only for the Hindus alone.

Section 125, Cr. P.C., 1973 is intended for a social reason to give a synopsis machine to serve a man's ethical constraint to his significant other, kids and old guardians so they may not bite the dust because of absolute destitution as they can't keep up with themselves. The point of this part is to shield the interests of a methodical society. The provisions of the Hindu Adoptions and Maintenance Act, 1956 give the freedoms of Hindu spouses, youngsters and old and weak guardians or even wards to be kept up with under the Hindu individual law.

#### **V. FINDINGS AND SUGGESTIONS**

1. There are different Maintenance laws in India among countless such networks in India. The genuine issue is how might there be proposals and ideas for uniform laws of Maintenance through India under a typical umbrella and which at more states should act as the role model. The central part of the Indian populace in India comprises Hindus and Muslims. The two of them have laws of Maintenance. Both are shastric and modern.
2. Despite available laws in India, there is no limitation prescribed in any act for deciding application, nor do the courts strictly deal with it due to which wife and children have to suffer.
3. Under the CRPC, a Magistrate has no inherent power like area 151 of the Civil Procedure Code or like 482 of the CRPC by which a High Court has innate power. Under Sec. 362 of the CRPC, Magistrate can't adjust or survey his order.

#### **VI. CONCLUSION**

After cautious contemplations of the support laws of Hindu local area and by due examination, successful measures should be taken to discover available resources on how to destroy lacunae, holes, oddities in support laws. It will have to find out how ideas can be discovered regarding uniform upkeep laws in India; thus, if at everything, it tends to be viably assuming this is the case, in what positive manner, to bring consistency and fixity of support laws. Almost certainly, the Parliament of India can bring vital regulations; however, regulatory great wishes

ought to be there. Increasingly more legal activism in this allure might be gladly received. A panel of famous legal advisers in India might help Parliament for this sake to recommend consistency and to annihilate holes, inconsistencies, laches and lacunae.

\*\*\*\*\*