
ALIMONY, MAINTENANCE AND ADOPTION

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ABSTRACT

The Indian law of alimony, maintenance and adoption reflects an ongoing dialogue between individual faith based customs and the constitutional principles of equality and dignity of humans. The three areas, in as much as they appear to be different, jointly determine the duties of State and society towards individuals, which are post-marital and filial. This research paper examines the evolution of these concepts in the doctrines and their development over time as religious controlled norms to become a tool of socio-economic justice based on constitutional interpretation and statutory revision.

The paper will start by looking at the early judicial attempts to balance religious law with fair values especially in *A. Yousuf Rawther v. Sowramma (1970)* in which Justice V.R. Krishna Iyer developed a more humanistic interpretation of Muslim matrimonial law that stressed equity instead of strictness. It subsequently places the historic ruling in *Shayara Bano v. Union of India (2017)*, the greater constitutional movement which abolished the practice of talaq-e-biddat, and as such affirmed that the personal laws may not be used to counteract the basic principles of equality, liberty, and dignity. The legislative changes especially the Dissolution of Muslim Marriages Act, 1939 and the Muslim Women (Protection of Rights on Marriage) Act, 2019 are all examined to provide a comparative understanding as to how the Parliament increasingly incorporated secular and rights-based reasoning into that which was once seen as a domain of religious adjudication.

Moreover, the study examines the current concept of adoption as a secular legal right and not a religious right and compares the individual law limitations of the past with the non-discriminatory provisions brought in by the Juvenile Justice (Care and Protection of Children) Act, 2015. Such change of lineage of rituals to child welfare helps highlight how India is slowly moving towards international norms like the Convention on the Rights of the Child and the Hague Convention on Intercountry Adoption.

The paper conceptually approaches alimony, maintenance and adoption as interrelated manifestations of the welfare obligation of the State each one of which is an adaptation of the law to the mediation of the balance between individual conviction and the justice of the people. With a doctrinal and comparative approach, it also claims that the Indian legal system features a

kind of a constitutional convergence, and plural personal laws are beginning to be increasingly aligned with international human rights values. Finally, the paper argues that the contemporary Indian paradigm of family law has ceased to be a set of individual religious codes and represents a constitutional space in which the principles of equality, insecurities and compassion are negotiated and reconstitutive.

I. INTRODUCTION

1.1 Background and Rationale of the Study

Profession of Indian family law is an indication of how the country is trying to strike a balance between the religious pluralism and the constitutional equality and human dignity. In the past, personal laws have been used to control issues to do with marriage, divorce, maintenance, and adoption; and each religious system has come up with its own system of conceptualization. Maintenance (vyaya) and adoption (datta homa) was a sacred obligation according to Hindu law, which guaranteed continuity of the lineage and social order. The Islamic law that was based on Sharia highlighted that it is an ethical and legal duty of the husband to provide support to his wife as well as children not only during the marriage but also to some extent after divorce.¹

Women Right to seek divorce on failure to maintain her on the part of the husband was codified in the Dissolution of Muslim Marriages Act, 1939 and thus the economic sustenance was considered as the basis of marital justice. The post independence Constitution transformed such personal commitments as human rights and welfare other than the observance of religion. Maintenance and alimony were therefore lawful means of attaining economic recovery and averting poverty after marriage breakdown.²

In the same way, adoption, which used to be restricted to Hindu religious practice, became a secular child welfare practice with the introduction of the Juvenile Justice (Care and Protection of Children) Act, 2015. The social need of such provisions is that they protect the vulnerable dependents wives, children and the infirm against abandonment and social marginalization.³ The twofold humanitarian concern of the contemporary family jurisprudence is the economic

¹ Fyze, A.A.A., *Outlines of Muhammadan Law*, 5th ed. (Oxford University Press, 2008) p. 147.

² The Dissolution of Muslim Marriages Act, 1939, s. 2(ii).

³ Juvenile Justice (Care and Protection of Children) Act, 2015, Chapter VIII.

security following the divorce and the well being of the orphaned or abandoned children.

Indian judicial system has increasingly brought constitutional morality to the interpretation of family law. In *A. Yousuf Rawther v. Sowramma*⁴ The decision of Justice V.R. Krishna Iyer in which he announced that maintenance under the Muslim law should be understood in the spirit of kindness and not the spirit of dominance was a giant leap towards gender sensitivity. In *Shayara Bano v. Union of India, (2017)*⁵ The Supreme Court found in the case that instant triple talaq was arbitrary and contravened the core rights of Muslim women and therefore, the constitutionalization of personal law. These judicial landmarks are those in which the personal law, statutory intervention and constitutional equality came together gradually.

1.2 Research Problem

Alimony, maintenance and adoption are areas within the Indian legal system that are still in pieces regardless of the progressive reforms. Every individual law Hindu, Muslim, Christian or Parsi has his or her maintenance and adoption norms and practices which in most cases give unequal results. Section 125 of the Code of Criminal Procedure, 1973 (a secular provision) overlapping with personal law remedies has created inconsistency of judicial interpretation and confusion of application.⁶

The issue of gender bias exists in the maintenance payment amount and the enforcement mechanisms remain feeble especially when the male avoids paying. In addition, adoption on the basis of personal laws is not uniform as although Hindu law offers a system of codification of trial adoption under the Hindu Adoptions and Maintenance Act, 1956, non-Hindu groups follow the primary system of juvenile justice, which, being secular, is procedural and unavailable to many. Such irregularities expose a disproportion of rights that are founded on religion as compared to constitutional equality, which necessitates the need to have a unified legal benchmark.⁷

1.3 Objectives of the Study

The objectives of this research are:

⁴ A. Yousuf Rawther v. Sowramma, AIR 1971 Ker 261.

⁵ Shayara Bano v. Union of India, (2017) 9 SCC 1.

⁶ Code of Criminal Procedure, 1973, s. 125.

⁷ Hindu Adoptions and Maintenance Act, 1956, ss. 6–12.

1. To examine the legal framework of alimony and maintenance across various religious and statutory laws in India.
2. To analyze the law relating to adoption and its intersection with constitutional values of equality and welfare.
3. To evaluate judicial interpretations that advance social justice and gender neutrality.
4. To suggest feasible reforms for achieving uniformity, efficiency, and fairness within family law.

Through these objectives, the study seeks to establish that personal law autonomy must evolve in tandem with constitutional morality and human rights jurisprudence.

1.4 Research Questions

The research addresses the following questions:

- How do different personal laws conceptualize and regulate alimony and maintenance, and how have courts reconciled these norms with constitutional principles?
- What are the socio-legal implications of adoption in India, and how do statutory provisions ensure the best interests of the child?
- How have Indian courts mediated conflicts between personal law and constitutional equality, especially in maintenance and adoption disputes?
- Can the adoption of a Uniform Civil Code or harmonized reform model resolve the disparities and contradictions that persist in family law?⁸

1.5 Hypothesis

The research hypothesis is that despite the way in which the Indian family law has increasingly assumed the ideals of the constitution, the law framework on alimony, maintenance and adoption has been inconsistent and disjointed. Such discrepancy discredits gender equality, efficient implementation, and does not fully achieve the welfare goals implicit in Articles 14,

⁸ Constitution of India, art. 44 (Directive Principles of State Policy).

15(3) and 21 of the Constitution.⁹

1.6 Methodology

This research employs a **doctrinal and analytical methodology**, focusing on statutory interpretation, judicial precedent, and scholarly commentary. Primary materials include constitutional provisions, legislation such as the *Hindu Adoptions and Maintenance Act, 1956*, the *Dissolution of Muslim Marriages Act, 1939*, and the *Muslim Women (Protection of Rights on Marriage) Act, 2019*.¹⁰ Case laws like *A. Yousuf Rawther v. Sowramma*, *Danial Latifi v. Union of India*, and *Shayara Bano v. Union of India* form the jurisprudential foundation. Comparative references to jurisdictions such as the United Kingdom and the United States are used to highlight international best practices. Reports of the **Law Commission of India**, particularly Reports Nos. 252 and 257, are also examined for policy context.¹¹

1.7 Scope and Limitations

The research confines itself primarily to the Indian legal and judicial context, with selective comparative analysis limited to common law jurisdictions. It focuses on statutory interpretation and constitutional adjudication rather than empirical data collection. While acknowledging the complexity of personal laws, the paper concentrates on their secular harmonization rather than the theological content of individual traditions.¹²

II. LEGAL FRAMEWORK OF ALIMONY AND MAINTENANCE IN INDIA

2.1 Concept and Meaning

Alimony and maintenance are terms that are used interchangeably though they have different legal implications. Maintenance This is a sum of money that one spouse is legally required to pay to the other (and/or to any dependent children) to make sure that he or she is maintained and leads a standard life in accordance with marital status. Alimonia, which is the Latin word alimonia, refers to the payment a spouse receives in a divorce court, mostly according to matrimonial law.

⁹ Constitution of India, Articles 14, 15(3), and 21.

¹⁰ The Muslim Women (Protection of Rights on Marriage) Act, 2019, §§ 3–4 (India).

¹¹ Law Commission of India, Report No. 252, *Right of the Hindu Wife to Maintenance* (2015).

¹² Paras Diwan, *Family Law in India* 58 (10th ed., Allahabad Law Agency 2021).

The maintenance in India is based on two principles dependency and obligation. Dependency is based on social and economic inequality between the spouses and obligation is based on the marital and moral obligations established by both the personal and the statutory laws. The reasoning behind this is that the dissolution of marriage should not put one of the spouses in a usually destitute and economically incapacitated state, which is usually the woman. Maintenance can thus be said to have a protective as well as a rehabilitative role in the justice system.

2.2 Historical Development

Maintenance in India is not a new concept as its roots are traced back to religious jurisprudence. According to Hindu law, pre-codification Manusmriti and Yajnavalkya Smriti considered maintenance to be a religious duty of the husband and son. After codification, the Hindu Marriage Act, 1955 (Sections 24-25) and the Hindu Adoptions and Maintenance Act, 1956 (Sections 18-22) resulted in this moral duty being a legal right, which could be enforced regardless of fault.

Maintenance (nafaqah) is a legal and moral obligation in the Muslim law, which is a result of marriage. The Dissolution of Muslim Marriages Act, 1939¹³ accepted non-maintenance of two years as a valid ground of divorce and the Muslim Women (Protection of Rights on Divorce) Act, 1986 limited maintenance to iddat period, however, was later read down in *Danial Latifi v. Union of India*¹⁴. Life time maintenance of the union of India to provide a reasonable and fair provision.

Among the Christians, the Indian Divorce Act, 1869, is applicable in matters of maintenance and grants both interim and permanent alimony, in Sections 36 and 37. In other cases, the Parsi Marriage and Divorce Act, 1936 equally empowers the courts to grant maintenance during and after the matrimonial proceedings.

Moreover, Section 125 of the Code of Criminal Procedure, 1973 offers a secular solution to wives, children, and parents who cannot sustain themselves thus cutting across the religious borders. This is the provision of the welfare-oriented aim of the State when there is no

¹³ The Dissolution of Muslim Marriages Act, 1939, § 2(ii) (India).

¹⁴ *Danial Latifi v. Union of India*, (2001) 7 SCC 740 (India).

impoverished person regardless of the religion or a personal law.¹⁵

2.3 Statutory Framework

The Indian legal system contains both **personal law provisions** and **secular statutory safeguards** governing maintenance and alimony:

1. Hindu Marriage Act, 1955

- *Section 24*: Provides for interim maintenance during the pendency of proceedings to either spouse lacking sufficient income.
- *Section 25*: Empowers courts to grant permanent alimony upon divorce, considering income, conduct, and other circumstances.¹⁶

2. Hindu Adoptions and Maintenance Act, 1956

- *Section 18*: Recognizes a Hindu wife's right to live separately and claim maintenance in cases of cruelty, desertion, or conversion of husband.
- *Section 19–22*: Extend maintenance obligations to dependents, including widowed daughters-in-law and aged parents.¹⁷

3. Muslim Law and Related Legislation

- *The Dissolution of Muslim Marriages Act, 1939*, Section 2(ii): Entitles a woman to dissolve her marriage if neglected or not maintained for two years.¹⁸
- *The Muslim Women (Protection of Rights on Marriage) Act, 2019*: Declares instant triple talaq void and ensures economic safeguards for divorced Muslim women.¹⁹

4. Secular Legislation

¹⁵ Code of Criminal Procedure, 1973, § 125 (India).

¹⁶ Hindu Marriage Act, 1955, §§ 24–25 (India).

¹⁷ Hindu Adoptions and Maintenance Act, 1956, §§ 18–22 (India).

¹⁸ The Dissolution of Muslim Marriages Act, 1939, § 2(ii) (India).

¹⁹ The Muslim Women (Protection of Rights on Marriage) Act, 2019, §§ 3–4 (India).

- *Section 125, Code of Criminal Procedure, 1973*: Provides maintenance to wives, legitimate or illegitimate children, and parents, enforceable across all religions.
- *Special Marriage Act, 1954, Section 37*: Enables maintenance for spouses married under a secular framework.²⁰

These statutes collectively represent an intricate legal mosaic where religious obligations coexist with secular entitlements, reflecting India's plural legal order.

2.4 Judicial Interpretations

The Indian judicial system has been instrumental in restoring the Indian law of maintenance to the constitutional morality and gender justice. Some major decisions have opened up the function of maintenance beyond the religious or procedural straitjackets:

- *Yousuf Rawther v. Sowramma (1971)*: Justice Krishna Iyer stressed that the context of maintenance in Muslim law should be seen through the prism of compassion and human dignity and not on male privilege, and the humanitarian nature of the Islamic jurisprudence.²¹
- *Danial Latifi v. Union of India (2001)*: the Supreme Court gave the 1986 Act a second chance and interpreted it to require that Muslim husbands should provide to the wife a reasonable and fair portion of her future in the iddat period with the effect of giving her long term maintenance.²²
- *Bhuwan Mohan Singh v. Meena (2015)*: The Court noted that the right of a wife to maintenance was the absolute right that derives out of marital status and was not defeated by technicalities of procedures and neglect by a husband.²³
- *Rajnish v. Neha (2020)*: The Supreme Court offered detailed instructions that guarantee consistency in identifying maintenance which guides the disclosure of income, assets,

²⁰ Special Marriage Act, 1954, § 37 (India).

²¹ *A. Yousuf Rawther v. Sowramma*, AIR 1971 Ker 261 (India).

²² *Danial Latifi v. Union of India*, (2001) 7 SCC 740 (India).

²³ *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 (India).

and liabilities by the two parties.²⁴

In these rulings, maintenance grew out of being a discretionary remedy into a constitutional right in the right to life and dignity in Article 21 of the Constitution.

2.5 Gender Justice and Economic Dependency

Even with the advances in the judicial field, the socio-economic dependency of a woman remains a key issue to regard as an influencing factor of a maintenance law. The traditional patriarchal social systems historically placed women in a financially dependent position that in most situations revealed women to poverty especially after the marriage failed. Maintenance laws should be redefined by the feminist legal theorists to act as a source of economic empowerment, and not as a source of sustenance.²⁵

This change can be seen in the recent jurisprudence. Courts have started to appreciate the fact that maintenance is one of the ways of restoring parity and rehabilitating the gulled spouse. The quantum determination is now determined by the principle of reasonable standard of living, instead of previous concepts of bare survival. Also, the judicial focus on mutual rights of husbands to maintenance although sporadic, is an indication of the movement towards gender neutrality in family law.

2.6 Challenges in Implementation

Although maintenance laws are exhaustive, implementation loopholes still exist. The weakest aspect is enforcement because of delays in the procedures, hiding of income and poor penalties imposed on non-compliance. Most of the women especially those who have a low economic background cannot afford to engage in long term litigation. The insufficiency of standardized rules of how to compute maintenance until the case of *Rajnish v. Neha* created unequal results in jurisdictions.

Moreover, civil, family and criminal courts have overlapping jurisdictions, which confuse the procedures. Maintenance granted as per section 125 CrPC can be in conflict of some order as under the personal laws resulting in multiplicity of proceedings. This highlights the importance

²⁴ *Rajnish v. Neha*, (2020) 12 SCC 415 (India).

²⁵ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 178 (Oxford Univ. Press 1999).

of having a standard maintenance code that would coordinate the substantive and procedural facets of all legal systems.²⁶

III. THE LAW RELATING TO ADOPTION IN INDIA

3.1 Concept and Purpose of Adoption

Adoption as a legal concept implies the legal implementation of the role of a parent toward a child not biologically related to that person. Adoption in India has transformed itself as a religious and patriarchal institution to guarantee spiritual salvation and descent into a secular child welfare and social justice tool.²⁷

The modern adoption law aims at protecting and rehabilitating orphaned, abandoned, and surrendered children as its main goal. The change in the adoption law where the right of the adopter to continue lineage is not a priority anymore but rather in the best interest of the child is a decisive step toward the constitutionalization of family law in India.²⁸

3.2 Historical Overview

The idea of adoption is dated to ancient Hindu books. The Dharmashastras accepted adoption (datta homa) as a religious duty whereby a son was handed over to another man in order to perform funeral rites and carry on the lineage. It was only the males who could be adopted and the approval of the natural father was of the essence. Social and legal intent of adoption was therefore closely connected with the metaphysical concept of origin and heirage.²⁹

Conversely, adoption in the Islamic law is not understood in the same way. Rather, it permits kafala, a sort of guardianship where a child is taken care of, brought up, but not subject to inheritance by the guardian and the guardianship ends on the child's birth, as did Christian and Parsi laws in earlier times.

The Hindu law codification of the Hindu Adoptions and Maintenance Act, 1956 (HAMA) was the first law to give comprehensive consideration to the adoption aspect in India and this was

²⁶ Law Commission of India, Report No. 257, *Reforms in Family Law* (2015).

²⁷ Black's Law Dictionary 52 (11th ed., Thomson Reuters 2019).

²⁸ Nisha Bhaskar, *Understanding Constitutional Convergence in Comparative Constitutional Law* 14 (Centre for Law and Policy Research 2020).

²⁹ Mulla, *Principles of Hindu Law* vol. I, 612 (22d ed., LexisNexis 2022).

done in stages until the secular Juvenile Justice (Care and Protection of Children) act came into the picture in 2000, and the new Act, 2015, which allowed adoption regardless of the religion.³⁰

3.3 Statutory Provisions

3.3.1 Hindu Adoptions and Maintenance Act, 1956 (HAMA)

The *Hindu Adoptions and Maintenance Act, 1956* lays down a detailed procedure and legal framework for adoption among Hindus, Buddhists, Jains, and Sikhs. Sections 6–12³¹ define the essential conditions:

- **Capacity to Adopt (s. 7–8):** Any Hindu male or female of sound mind and majority may adopt, provided consent of the spouse is obtained unless waived for valid reasons.
- **Capacity to Give in Adoption (s. 9):** Only the child's father, mother, or guardian may lawfully give the child in adoption.
- **Capacity to Be Adopted (s. 10):** The child must be Hindu, unmarried, and below the age of 15, unless customary law permits otherwise.
- **Effect of Adoption (s. 12):** Adoption results in the complete severance of ties from the biological family and integration into the adoptive family as a natural-born child.⁷

HAMA thus formalized adoption as both a personal and legal institution but confined its operation to the Hindu community, leaving non-Hindus to rely on alternative legal mechanisms.

3.3.2 Juvenile Justice (Care and Protection of Children) Act, 2015

Juvenile Justice Act, 2015 is a secular and inclusive law on adoptions that cuts across the board to all citizens irrespective of religion. Chapter VIII (Sections 56-73) controls the process of adoption requiring that all the processes must be based on the principles of the best interest of the child, his/her stability, and welfare. Section 57 provides eligibility criterion to potential adoptive parents, whereas in Section 58 the process of adoption by use of specialized adoption

³⁰ Juvenile Justice (Care and Protection of Children) Act, 2015, §§ 56–58 (India).

³¹ Hindu Adoptions and Maintenance Act, 1956, §§ 6–12 (India).

agencies has been given.

The Central Adoption Resource Authority (CARA) acts as the important body with regards to regulating and overseeing adoption within this Act.³² This legislative framework is a response to the need of transparency, uniformity and accountability in the domestic and inter country adoptions by introducing the Child Adoption Resource Information and Guidance System (CARINGS) which is an agreement that follows the Hague Convention on Protection of Children and Cooperation in Intercountry Adoption (1993) to which India is a signatory.³³

3.4 Judicial Pronouncements

An example of judicial interpretation has been used decisively to influence the adoption law and bring it out of the realms of religion.

- **"Laxmi Kant Pandey v. Union of India (1984):"** The Supreme Court has provided certain guidelines to the inter-country adoption and says that such adoption should be done taking into account the well being of the child at the foremost consideration than any other factor. The case emphasized that governmental and judicial authorities should scrutinize it carefully to prevent child trafficking.³⁴
- **"Shabnam Hashmi v. Union of India (2014):"** The Court appreciated the right of any person to adopt a child regardless of the restrictions of the personal laws that was prohibited by the Juvenile Justice Act. It held that the JJ Act offers a secular way of adoption hence balancing the individual faith and the constitutional rights.³⁵
- **"Philomena Joseph v. State of Kerala (2018):"** the Kerala High Court said that JJ-based adoption is valid to all citizens and can not be denied on grounds of religion.³⁶

These rulings represent a jurisprudential change of religious conformity to constitutional inclusivity, whereby the act of adoption is viewed as a way to guarantee that a child gets the right to a family and identity instead of the privilege of inheritance by the adopter.

³² Central Adoption Resource Authority (CARA), *Adoption Regulations*, 2022, Reg. 2(c) (India).

³³ *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, May 29, 1993, 1870 U.N.T.S. 167.

³⁴ *Laxmi Kant Pandey v. Union of India*, (1984) 2 SCC 244 (India).

³⁵ *Shabnam Hashmi v. Union of India*, (2014) 4 SCC 1 (India).

³⁶ *Philomena Joseph v. State of Kerala*, 2018 SCC OnLine Ker 244 (India).

3.5 Adoption and Personal Laws

The Indian legal system of adoption is still pluralist but slowly moving towards homogeneity. In HAMA, it is a full transfer of parentage in law whereas in Muslim, Christian and Parsi personal laws it is not known in its strict legal meaning. The Guardianship under the Guardians and Wards Act, 1890 still remains the main child care system to these communities.³⁷

Juvenile Justice Act, 2015, however, goes beyond these restrictions by allowing secular adoption that is available to everyone. The Supreme Court in *Shabnam Hashmi* specifically asserted that although personal laws might not be supportive of adoption, JJ Act provides a separate and parallel system of statutory provisions with constitutional values so as to ensure legal pluralism as well as coherence of the constitution.

Single parents are also assisted by the Act, and with recent administrative circulars, to unmarried women and divorced persons, which brings domestic law into line with international standards of child rights

3.6 International and Comparative Perspective

The strategy of adoption adopted in India shapes in line with the international tools that place emphasis on child welfare. The Hague Convention on Intercountry Adoption (1993) establishes principles of transparency, cooperation, and in the best interests of the child, and has the same requirement as the UN Convention on the Rights of the Child (1989).³⁸

In comparison, the Adoption and Children Act, 2002 in the United Kingdom incorporates adoption as a part of the wider child protection resources, with welfare being the most important. Post-adoption care and periodic review is also a priority of the United States under the Intercountry Adoption Act, 2000, and is still regarded as problematic in India, which lacks a bureaucratic lag, post-adoption monitoring, and issues with public awareness, which are more managed by special family courts and centralized data systems.³⁹

³⁷ Guardians and Wards Act, 1890, § 17 (India).

³⁸ *Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*, art. 4, May 29, 1993, 1870 U.N.T.S. 167.

³⁹ Adoption and Children Act 2002 (U.K.); Intercountry Adoption Act 2000 (U.S.).

IV. INTERFACE BETWEEN ALIMONY, MAINTENANCE AND ADOPTION: A SOCIO-LEGAL ANALYSIS

4.1 Common Underlying Principles

Though alimony, maintenance, and adoption seem to work in different fields with the family law, they have a common jurisprudential basis the protection of vulnerable people and the encouragement of well-being in the family relationships. The three legal mechanisms are based on a similar moral and constitutional assumption, the duty of care. Where the economic dependency and social stratification is still a reality in society, the State should make sure that no single spouse or child is abandoned in total poverty or the lack of the essential dignity as a result of the family breakdown or the lack of the family.⁴⁰

Legally, maintenance will keep the dependents sustained, alimony will help recover the divorced individual financially and adoption will offer children without any parent care a family and an identity. Their overall philosophy is social justice via welfare an idea that is directly stated in the Directive Principles of State Policy especially Articles 38 and 39 of the Constitution, which encourages the State to foster equality and secure the interests of women and children.⁴¹

4.2 Interconnectedness of Maintenance and Adoption

The dependency between maintenance and adoption can be seen in the mutual support and care that the two institutions develop. Adoption does not only pass the right to parent, but it also passes the legal responsibilities such as a responsibility to take care of the adopted child. In *section 12 of the Hindu Adoptions and Maintenance Act, 1956*, the rights of an adopted child in the adoptive family are provided the same as those of a natural-born child, such as giving an inheritance and maintenance.⁴²

On the other hand, in a post-divorce case, child maintenance is often a matter that overlaps with adoption and custody. In their decision on maintenance claims made under the pursuant provisions of *Section 125 of the Code of Criminal Procedure, 1973*, or *26 of the Hindu marriage act, 1955*, courts will always take into consideration the welfare of the child, which

⁴⁰ Paras Diwan, *Family Law in India* 114 (10th ed., Allahabad Law Agency 2021).

⁴¹ Constitution of India, arts. 38–39.

⁴² Hindu Adoptions and Maintenance Act, 1956, § 12 (India).

is actually a reflector of the adoption law.⁴³

Such a crossroads can also be observed when divorced or single people adopt children. Both maintenance and guardianship obligations have now been extended to non-traditional family systems, as Juvenile Justice (Care and Protection of Children) Act, 2015 permits single parents to adopt based on the capacity and fitness. When such contextualization is employed adoption is an exercise of personal choice, as well as a realization of the constitutional value of tending to the vulnerable.⁴⁴

4.3 Judicial Trends and Social Realities

It was always pointed out by Indian courts that the family law interpretation should act in the best interest of dependents, particularly of women and children. In *A. Yousuf Rawther v. Sowramma*, Justice Krishna Iyer contended that Muslim law should not be understood as an instrument of male privilege but as a sign of compassion and justice.⁴⁵

The ruling of the Supreme Court on the case of "*Danial Latifi v. Union of India*"⁴⁶ interpreted this principle as the interpretation of the Muslim Women (Protection of Rights on Divorce) Act, 1986 in balance with the Articles 14 and 21 of the Constitution, thus obliging the Muslim husbands to make reasonable and fair provision to their divorced wives after the iddat period. The Court, Union of India, the Court believed that adoption is a constitutional and secular right to all citizens regardless of religious beliefs and so it was a way of closing the gap between the personal and the fundamental rights.

These decisions have implications on socio-legal implications. They show that judiciary perceives maintenance and adoption as the tool of social reconstruction and not the family law remedies but the expressions of constitutional morality. This change is consistent with the concept of constitutional convergence proposed by Nisha Bhaskar to the process of different legal systems converging based on common ideas of human dignity and equality.

As a society, things are never simple. Effective implementation is usually hampered by patriarchal structures, financial inequality as well as cultural taboos. Most divorced women

⁴³ Hindu Marriage Act, 1955, § 26 (India); Code of Criminal Procedure, 1973, § 125 (India).

⁴⁴ Juvenile Justice (Care and Protection of Children) Act, 2015, §§ 56–58 (India).

⁴⁵ *A. Yousuf Rawther v. Sowramma*, AIR 1971 Ker 261 (India).

⁴⁶ *Danial Latifi v. Union of India*, (2001) 7 SCC 740 (India).

who are entitled to maintenance are delayed, under-assessed or not enforced despite being allowed by law. Similarly, adoption particularly amongst the singles or unmarried has been facing bureaucratic and societal opposition. Consequently, jurisprudence has changed, but the society does not accept these changes in the law.

4.4 Challenges and Critique

The interdependence between maintenance and adoption shows the system fragmentation of personal law in India. All the religious codes dictate their own structure and this results in unequal standards of right and application. The lack of a standardized formula of maintenance preceding *Rajnish v. Neha (2020)*⁴⁷, unpredictability has been promoted and the lack of consistent adoption rules in different states.

Besides, the gendered orientation of the law remains a challenge. Maintenance orders reflect the dependency of the female to a large extent, unintentionally supporting the patriarchal assumptions. On the other hand, adoption regulations are secular as provided by the Juvenile Justice Act but in some cases are not accessible to men or same-sex couples because of narrow administrative directions.

Another complication is two-sidedness of enforcement mechanisms. Under the Code of Criminal Procedure and personal laws, maintenance orders work in parallel, and this poses jurisdictional problems. The process of adoption, in its turn, demands that both the Juvenile Justice framework and the CARA regulations are adhered to, which results in the time-consuming nature of the procedure. The outcome of this is what can be referred to as a justice system that seems to be protective on paper and disjointed on the ground.⁴⁸

The critics also claim that the judicial ingenuity in balancing the personal laws with the constitutional norms in a progressive manner, is a danger to the legislative prerogatives. However, without wholesale change, judicial intervention is the main tool that can be used to provide equity. The courts being the constitutional custodians have therefore become the driver of social reform within the family law.

⁴⁷ *Rajnish v. Neha*, (2020) 12 SCC 415.

⁴⁸ Central Adoption Resource Authority (CARA), *Adoption Regulations*, 2022, Reg. 2(c) (India).

4.5 Human Rights and Constitutional Dimensions

Fundamentally, the maintenance, alimony and adoption interface reflects the commitment to human dignity in the constitution. The Constitution provides in the interpretation of the Supreme Court that Article 21 of the Constitution does not stop at survival, but it also provides a right to live with dignity, security, self-sufficiency and this provision can be integrated by the maintenance laws to provide that no spouse or child goes home destitute and the adoption laws can also assure this provision by providing that in a family set up, the whole family lives together in a state of equality and welfare as per the constitutional promise of equality and welfare.

This moral architecture is further advanced in article 14 and 15(3) which require equal treatment and authorize the State to make special provision concerning women and children. Articles 39(e) and 44 of the Directive Principles of State Policy also impose an obligation on the State to establish a standard legal system to protect the dependents and foster social welfare.⁴⁹

These constitutional requirements are also in line with international requirements as stipulated in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC) both of which India is committed to by its ratifications. Combined, they place maintenance and adoption in the broader human rights discourse such that it is no longer a separate result of legal rights, but as part of the policy and social justice.⁵⁰

V. CONCLUSION AND SUGGESTIONS

5.1 Summary of Findings

The analysis shows that the Indian legal framework that regulates alimony, maintenance and adoption is still a disjointed and inconsistent one because it is a system of various personal laws alongside the secular ones. All religious systems have their own set of standards and process concerning spousal support and child welfare, which leads to unfair results and ambiguity in interpretation. The Indian family law, whose pluralistic roots are constitutional even in terms

⁴⁹ Constitution of India, arts. 14, 15(3), 21, 39(e), 44.

⁵⁰ *Convention on the Elimination of All Forms of Discrimination Against Women*, Dec. 18, 1979, 1249 U.N.T.S. 13; *Convention on the Rights of the Child*, Nov. 20, 1989, 1577 U.N.T.S. 3.

of Articles 25 and 26, clashes more often with the provisions of equality, dignity and non-discrimination under Articles 14, 15 and 21 of the Constitution.

Judicial interventions have been revolutionary in alleviating such inconsistencies. The courts in cases like *A. Yousuf Rawther v. Sowramma*⁵¹, *Danial Latifi v. Union of India*⁵², and *Shayara*⁵³ *Bano v. Union of India*, and *Rajnesh v. Neha*⁵⁴, have gradually transferred the principles of constitutional morality and social justice into personal interpretation of law. Courts have promoted maintenance as a constitutional right rather than personal obligation and adoption as a religion rather than a child-focused welfare system by use of purposive reasoning.

This harmonization, nevertheless, is partial. Policymaking initiatives such as the Dissolution of Muslim Marriages Act, 1939, Hindu Adoptions and Maintenance Act, 1956, and Juvenile Justice (Care and Protection of Children) Act, 2015 have shifted towards uniformity however there are still procedural inefficiencies, gender discrimination, and lack of effective enforcement tools discoring their intentions. The jurisprudence exhibits a judicial purpose to develop a logical and reasonable family law system but this does not happen due to codification, it is fragmented at the practical level.⁵⁵

5.2 Suggestions and Way Forward

1. Equity Uniform Family Code Assured:

There is an urgent requirement to have a codified, religion-neutral family code, which reconciles the concepts of maintenance, alimony, and adoption. This codification cannot bring about homogeneity by obliterating the cultural uniqueness, but it should help to standardize rights and processes among different communities. The emphasis must be on equality in the constitution and not the conformity in the theology.

2. Neutral Workplace Interpretation of terms Spouse and Parent:

The statutes of maintenance and adoption need to be re-read with gender-neutral meanings to accommodate the modernities. Both genders must be acknowledged to be

⁵¹ *A. Yousuf Rawther v. Sowramma*, AIR 1971 Ker 261 (India).

⁵² *Danial Latifi v. Union of India*, (2001) 7 SCC 740 (India).

⁵³ *Idib.*

⁵⁴ *Rajnesh v. Neha*, (2020) 12 SCC 415 (India).

⁵⁵ Law Commission of India, Report No. 257, *Reforms in Family Law* (2015).

able to claim and maintain as well as the idea of parenthood must allow the consideration of single parents and non-traditional families, in line with the jurisprudence of Shabnam Hashmi and the norms of child rights worldwide.

3. Incorporation of Maintenance and Adoption into a Welfare Model:

Maintenance and adoption are not individual solutions, and they should be regarded as mutually complementing mechanisms within an overall welfare system. A single family welfare code would be able to incorporate the post-marital support, custody and adoption provisions that would be consistent and reduce overlaps in litigation.

4. Enforced Enhanced Enforcement and Financial Disclosure System:

The imperfect enforcement is the least strong point of maintenance law. Following the *Rajesh v. Neha* policies, all the maintenance actions must be required to have clear financial disclosure, standard income evaluation and time-limited performance. Family Courts should have special divisions of maintenance and adoption to ensure expediency of relief and minimize duplication of proceedings.

5. Awareness and Accessibility:

The study revealed that the majority of patients were aware of the program's existence. The awareness of the program was found to be high among the majority of patients. The adoption process should be simplified by the administration particularly by digitization of CARA and by the state-based adoption agencies so that more individuals who are single, divorced, or economically weaker can adopt. Maintenance and adoption cases should be provided with state-funded legal aid in order to ensure the right to equality of access to justice in Article 39A.⁵⁶

6. Coherence to the International Agreements:

India must keep in line with the global conventions on women and family rights like CEDAW and UNCRC, and the gender equality and child welfare must be the focus point of legislative and policy change. Adoption practices would do well to embrace

⁵⁶ Central Adoption Resource Authority (CARA), *Adoption Regulations*, 2022, Reg. 2(c) (India).

the global best practices on post adoption monitoring and psychosocial support.⁵⁷

5.3 Concluding Remarks

The development of alimony, maintenance and adoption in India is an example of a constitutional process of turning individual duty into a social need. These legal establishments albeit based on a variety of religious traditions have converged under the umbrella philosophy of human dignity and welfare in the society. This change has been initiated by the judiciary that interprets individual laws in harmony with the constitutional rights and other international human rights provisions.

The family law practice requires that justice is not only harmonized but it is also homogenized. It demands a rights based structure that honors the diversity of cultures but one that makes sure that no spouse or child goes without sustenance, protection or identity. The promise of equality, dignity, and justice to all the people in the realms of family life can be achieved in the Indian Constitution only with the help of a reimagined, welfare-focused, and gender-neutral family law system based on constitutional morality.

⁵⁷ *Convention on the Elimination of All Forms of Discrimination Against Women*, Dec. 18, 1979, 1249 U.N.T.S. 13; *Convention on the Rights of the Child*, Nov. 20, 1989, 1577 U.N.T.S. 3.