
ALIMONY AND MAINTENANCE LAWS IN INDIA: A COMPARATIVE STUDY OF THE LEGAL PROVISIONS OF UK, IRELAND AND CANADA

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ABSTRACT

In and of itself, maintenance and alimony serve as a gauge of social justice. One partner's legal duty to support the other financially after a separation or divorce could be regarded as a requirement of the marriage. Alimony is, in essence, the right to reasonable and justifiable necessities. Another way to term it is as spousal support. It would also refer to means of subsistence, the provision of essentials and amenities help, support, and assistance, as well as the support that one person is obligated to provide to another in order to survive. The Court held in the case of *Francis Coralie v. Union Territory of Delhi*¹ that the right to life encompasses the right to live with dignity and everything that accompanies it, namely, the basic needs of life, such as enough food, clothing, and a shelter as well as access to facilities for reading, writing, and expressing oneself in a variety of ways, as well as the freedom to move about and mixing and commingling with fellow human beings.² The objective of maintenance and alimony provisions in India is to serve social purposes. Both personal laws and criminal laws have these provisions. All of these provisions are meant to compel someone to uphold the moral duties that they have in society towards their spouse, kids, and parents. In UK, there are both written and unwritten laws regarding alimony and maintenance. The legal duty to pay maintenance and alimony, also known as the duty of support, arose from the marital relationship itself and was imposed regardless of the wife's premarital wealth. Alimony in the unwritten law of England developed as a part of the law of divorce in the Ecclesiastical courts. On the other hand, Matrimonial Causes Act, 1978 is the major Act which governs the marriage, divorce, separation, maintenance, alimony etc. Spousal support is covered by both the Family Law Act and the Divorce Act in Canada. The primary goal is to identify any financial benefits or drawbacks that the spouses may have as a result of the divorce or as they leave the marriage and

¹ AIR 1981 SC 746

² Narender Kumar, Constitutional Law of India 115 (10th edn. 2018)

to minimize any financial hardship that may have resulted from the dissolution of the marriage. This paper compares and contrasts Indian law with those of the United Kingdom, Ireland, and Canada with regard to alimony and maintenance. Constitution of any country determines and conditions the laws of that State. Indian constitution draws inspiration from multiple constitutions of the world. However, the basic structure of the Indian constitution is grounded in the constituent features of Irish, English and Canadian constitutions. It becomes imperative that laws of these above mentioned nations will cast an influence on the laws of our country too. Hence, these constitutional provisions and laws, with special reference to alimony and maintenance laws bear significant effect on Indian alimony laws as well. This paper also looks for legal distinctions and focuses on determining if these distinctions strengthen or introduce flaws into Indian legislation.

Keywords: Maintenance, Alimony, Gender Neutrality, Uniformity.

Introduction

Marriage is demonstrated to be a universal social institution. It is established with the objective to control and regulate the life and behaviour of human beings. Right to marriage under Indian Constitution is guaranteed under Article 21 which states about the right to life as a fundamental right to every person in the country. Rituals, ceremonies and registration mandate of a marriage in India differs from religion to religion, region to region and each such religion has an individual set of personal laws governing the sacrosanctness of marriage.

Alimony is a right to get the necessities which are justified and reasonable. The Latin term 'alimonia' from which the English term 'alimony' has been derived actually means sustenance. It can also be said as spousal support. It would include means of subsistence, supply of necessities and conveniences, aid, support, assistance, the support which one person who is bound to extend, gives to another for his/her living. It would also include medical and other expenses related to normal pursuit of life, so that a person can live in the manner, more or less, to which he/she is accustomed. It may be considered as a legal marital obligation of a partner in a marriage to provide financial support to the other partner following a separation or divorce. The object of alimony is to provide financial support by one partner to other who has a lower income or no income at all to meet his or her basic necessities. According to the definition given by Corpus Juris, alimony is the allowance required by law to be made to a wife, out of her husband's estate for her support either during the pendency of the matrimonial suit or on

its termination, where the fact of the marriage is established and she proves that she is entitled to a separate maintenance. Like maintenance, alimony denotes the existence of an obligation on the part of a person to provide for the need of another person or persons who is or are in one way or the other related to, or dependant upon him.³ Though the term 'alimony' doesn't have any statutory definition, but the term 'maintenance' has been defined under Section 3(b) of Hindu Adoption and Maintenance Act, 1956. According to this section, maintenance includes provision for food, clothing, residence, education and medical attendance and treatment. In the case of an unmarried daughter, it also includes the reasonable expenses of and incident to her marriage.

The objective of maintenance and alimony provisions in India is to serve social purposes. Both personal laws and criminal laws have these provisions. All of these provisions are meant to compel someone to uphold the moral duties that they have in society towards their spouse, kids, and parents. In UK, there are both written and unwritten laws regarding alimony and maintenance. The legal duty to pay maintenance and alimony, also known as the duty of support, arose from the marital relationship itself and was imposed regardless of the wife's premarital wealth. Alimony in the unwritten law of England developed as a part of the law of divorce in the Ecclesiastical courts. On the other hand, Matrimonial Causes Act, 1978 is the major Act which governs the marriage, divorce, separation, maintenance, alimony etc. Spousal support is covered by both the Family Law Act and the Divorce Act in Canada. The primary goal is to identify any financial benefits or drawbacks that the spouses may have as a result of the divorce or as they leave the marriage and to minimise any financial hardship that may have resulted from the dissolution of the marriage.

Alimony and Maintenance under Indian Legal System

Part III of the Indian Constitution has given its citizen certain exclusive fundamental rights which are to be enjoyed against the State. This part provides with, inter alia, the right to equality and right to life which are extraordinary rights and can never be denied by the State. The concept of equality has been held rudiment to the rule of law and is regarded as the most fundamental hypothesis of republicanism.⁴ The majority of the Supreme Court has held in the

³ Dr. Paras Diwan, Modern Hindu Law (21st edn. 2012)

⁴ Narender Kumar, Constitutional Law of India 115 (10th edn. 2018)

case of *Indira Nehru Gandhi v. Raj Narain*,⁵ that the right to equality conferred by Article 14 is a basic structure of the Constitution and an essential feature of democracy or rule of law. It has been held to be a right which more than any other is a basic principle of our Constitution.⁶ It was interpreted by the Supreme Court in the case of *Marri Chandra Shekhar Rao v. Dean, Seth G. S. Medical College*,⁷ that the rule of equality is not an absolute one and there are a number of exceptions to it. Right to equality and equal protection of law must become a living reality for the large masses of the people. Those who are unequal, cannot be treated by identical standards. It may be equality in law but it would certainly not be real equality. But gender based reservation system did not succeed in achieving gender equality in India.

As per Article 21, the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as clothing, sufficient nutrition and shelter over the head and facilities for writing, reading and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow people.⁸ It was also held by the Supreme Court that right to livelihood is also an important facet of right to life. If the right to livelihood is not treated as a part of the constitutional right, the right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of repudiation.⁹

Article 39A of the Indian Constitution, which was inserted by the Constitution (42nd Amendment) Act, 1976, states that the State is under obligation to ensure and secure the operation of legal system which is to promote justice on a basis of equal opportunity, to provide free legal aid by appropriate legislation or schemes and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic difficulties or other disabilities.¹⁰ It falls within the broad header of the Directive Principles of State Policy which states that the State shall direct its policies toward ensuring that all citizens, men and women alike, have access to a sufficient means of subsistence, that children are provided with opportunities and facilities to develop in a dignified and healthy manner and that childhood and youth are protected from exploitation and moral and material desertion .

⁵ AIR 1975 SC 2299

⁶ Narender Kumar, Constitutional Law of India 115 (10th edn. 2018)

⁷ 1990(3) SCC 130

⁸ Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746

⁹ Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180

¹⁰ Narender Kumar, Constitutional Law of India 559 (10th edn. 2018)

Alimony under Parsi Law

The Parsi Marriage is regarded as a contract through a religious ceremony of Ashirvad which is necessary for its validity. The Parsi Marriage and Divorce Act at present was passed in 1865. Since then the circumstances have greatly changed and there has also been a change in the sentiments and thoughts of the Parsi community. Now, Parsi law for marriage and divorce is regulated and monitored by the Parsi Marriage & Divorce (Amendment) Act, 1988.

Section 39 of the Act deals with alimony pendente lite. According to this section, if an application is made before the court for alimony by either the husband or the wife who has no independent income sufficient for his or her support and the necessary expenses of the suit, the court may order the defendant to pay to the plaintiff, the expenses of the suit and such weekly or monthly sum, during the suit, as having regard to the plaintiff's own income and the income of the defendant.

Section 40 states that any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on an application made to it either by the wife or the husband, order that the defendant shall pay to the plaintiff for her or his maintenance and support, such gross sum or such monthly or periodical sum, for a term not exceeding the life of the plaintiff as taking into consideration the income and owned property of both the parties, their conduct and other facts and circumstances of the case, it may seem to the court to be just and any such payment may be secured, if necessary, by a charge on the movable or immovable property of the defendant.

The court, on application by either party and after getting satisfied, may verify, modify or rescind any previous order as it thinks fit. The order in favour of wife can be cancelled if it is found that she is remarried or has not remained chaste and in favour of husband, if it is found that he had sexual intercourse with any woman outside wedlock.

According to section 41, in all cases where the court shall make any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court or to a guardian appointed by the court and may impose any terms or restrictions which to court may seem expedient and may from time to time appoint a new trustee or guardian, if for any reason it shall appear to the court expedient to do so.

Alimony under Hindu Law

Under Hindu Law, in certain cases the duty and obligation of a Hindu to maintain others arises from the mere relationship between the parties, independently of the possession of any property. In other cases, it depends altogether on the possession of property.¹¹ The former liability may be called as personal liability or absolute liability or liability on account of relationship and the later is the liability restricted by the possession of ancestral or other property.¹²

According to Hindu Law, a member of the family is entitled either to a share in the ancestral property or maintenance out of the income of that property. Wife, widowed daughter-in-law, children and aged parents and dependants of the deceased are the persons who are entitled to maintenance under Hindu Adoptions & Maintenance Act, 1956.

Section 18 of the Hindu Adoption & Maintenance Act, 1956 deals with the maintenance of wife only. There is no mention regarding the right of a husband to claim maintenance or alimony from his wife. Prior to this Act the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, was in force but this Act has now been replaced by Section 29 of the Hindu Adoption and Maintenance Act, 1956.¹³ According to section 18(1), a Hindu married woman, irrespective of the date of marriage, shall be entitled to be maintained by her husband and this obligation on her husband will continue throughout the life of the wife. The right of the wife to claim maintenance from her husband is her personal right against her husband and it arises irrespective of the fact whether the husband has got any property either ancestral or self acquired.¹⁴ A wife is entitled to be maintained out of the profits of her husband's property and under the express terms of Section 39 of the Transfer of Property Act,¹⁵ can enforce her right against the properties in the hands of the alienee with notice of her claim.¹⁶ Thus, the right of a wife for maintenance is an incidence of the status or state of matrimony and a Hindu is under a legal obligation to maintain his wife. The liability to maintain the wife

¹¹ Savitri Bai v. Laxmi Bai (1978) 2 Bom 573

¹² R. K. Agarwal, Hindu Law 130 (23rd edn, 2013)

¹³ R. K. Agarwal, Hindu Law 130 (23rd edn, 2013)

¹⁴ Jayant v. Almala (1924) 27 Mad 34

¹⁵ S. 39 of Transfer of Property Act, 1882 - Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous, but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

¹⁶ Chandamma v. Maniam Venkatarreddi (1959)

is completely personal liability and arises from the very existence of the relation between the parties. Section 18 of the Act, substantially reiterates that right and lays down the general rule that a Hindu wife, whether married before or after commencement of this Act, is entitled to be maintained by her husband during her lifetime. According to section 18(2), a Hindu wife shall be entitled to live separately from her husband without forfeiting her claims to maintenance if he is guilty of desertion i.e. absconding her without reasonable cause and without her consent or against her wish or wilfully neglecting her or if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband or if he is suffering from a virulent form of leprosy or if he has any other wife living or habitually resides with a concubine elsewhere or if he has ceased to be a Hindu by conversion to another religion or if there is any other cause justifying her living separately. But the wife shall not be entitled to a separate residence and maintenance from her husband if she is unchaste or cease to be a Hindu by conversion to another religion. Where the wife claims separate residence, the burden lies upon her to show the special circumstance which entitles her to a separate residence.

Sections 24 & 25 of Hindu Marriage Act, 1955 deals with maintenance and surprisingly, it gives the right to claim maintenance both to the husband and the wife. Section 24 of the Hindu Marriage Act deals with maintenance pendent lite during the proceedings between a husband and a wife, while Section 25 of this Act deals with permanent alimony and maintenance to be fixed at the time of passing any decree or subsequent thereto. According to Section 24, if it appears before the Court at any time during the pendency of a proceeding under this Act that either the wife or the husband has no independent income sufficient for his or her support and the necessary expenses of the proceeding, the court may order to the respondent to pay to the petitioner the expenses of the proceeding and a reasonable monthly expense during the proceeding after considering the petitioner's own income and the income of the respondent.

Maintenance pendente lite means any of the spouses is financially weak and filed any matrimonial relief against the other spouse and the proceedings are still pending, the spouse weak in financial position can claim maintenance during the pending of the litigation.¹⁷ Section 24 of the Act not only recognises the principle of the right of a wife for maintenance but goes a step further to lay down that such an order can be made by the court even in favour of the husband. If the husband is himself dependent, he need not pay for maintenance. In *Smt. Pramila*

¹⁷ Dr. S. R. Myneni, Hindu Law (1st edn, 2009)

Bhatia v. Vijaya Kumar Bhatia,¹⁸ the Court held that when husband is unemployed and dependent on his mother, wife is not entitled to maintenance. The object behind section 24 of the Act is to provide financial assistance to the indigent spouse to maintain himself or herself during the pendency of the proceedings and also to have sufficient fund to defend or carry on the litigation so that spouse does not unduly suffer in the conduct of the case for want of fund¹⁹ and to ensure that any party to marriage against whom a matrimonial litigation has started does not suffer injustice on account of his or her poverty.²⁰ It has been ruled by the Court that in absence of any special circumstance, one fifth of the entire income of the husband's income must be parted by him towards maintenance of his wife.²¹ But it has been overruled that it is not mandatory on the court that one fifth of the net income of the husband (or wife) should be awarded by way of interim maintenance to the applicant.²²

Thus, the application for maintenance can be made either by the 'wife' or 'husband'. Granting of maintenance to a husband was entirely new and exceptional concept accepted in the Indian Jurisprudence by sections 24 & 25 of the Hindu Marriage Act. Once it is established that the applicant has no sufficient means for her or his maintenance and support, the court should pass an order of maintenance. These sections are considered as welfare legislation. Right to maintenance under section 25 would include right to residence too.²³

A combined reading of sections 24 and 25 of the Hindu Marriage Act, 1955 would reveal that both the sections are angling provisions and confer a right on the indigent spouse to claim maintenance either pendente lite or in the nature of permanent alimony and maintenance.

Alimony under Muslim Law

It has been contended that the Mohammedan Law as to maintenance is a law of imperfect obligation imposing a moral and not a legal obligation.²⁴ It is incumbent on a husband to maintain his wife, whether she be Muslim or Kitabiya, poor or rich, enjoyed or unenjoyed, young or old. Where the wife is so young that she is unable for matrimonial intercourse, has no right to get maintenance from her husband, whether she is living in his house or with her

¹⁸ AIR 2000 Raj 362

¹⁹ Chitralekha v. Ranjit Rai (AIR 1977 Del 176)

²⁰ Sohan v. Smt. Kamlesh (AIR 1984 P&H 332)

²¹ Prasanna Kumar v. Sureshwari (AIR 1969 Orissa 12)

²² L.R. Rajendran v. Gajalanshi 1985

²³ B.P. Achala Anand v. S. Appi 2005 SC 986

²⁴ Mohd. Jusab v. Haji Adam ILR (1911) 37 Bom 71

parents.²⁵ This broad and wide obligation is restricted only in cases where she is not obedient and does not allow the husband free access at all lawful times. If the husband has not paid the prompt part of dower or she refuses to live with her husband because of cruelty, the husband is bound to maintain her.²⁶ Where husband has married a second wife or keeps mistress, the wife may refuse to live with the husband and still claims maintenance from him. Under Muslim Law, a divorced wife is entitled to maintenance only during idiot period. It was held otherwise in the case of *Shah Bano Begum Case*.²⁷ It was a controversial maintenance lawsuit in India, in which the Supreme Court delivered a judgment favouring maintenance given to an aggrieved divorced Muslim woman. Then protests started and the 1986 Act was passed to nullify the verdict of the above mentioned Act. It was stated before the Court that the Muslim Women (Protection of Rights on Divorce) Act, 1985 was enacted to undo the judgement in *Mohd. Ahmed Khan v. Shah Bano Begum & Ors.*²⁸ Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 entitles a divorced woman to (i) reasonable and fair provision, (ii) maintenance to her, (iii) provision and maintenance to her children for two years, (iv) mar amount and (v) all properties given to her before, at the time of and after her marriage. The purpose behind this Act was to safeguard the rights of Muslim women who have been divorced by, or have obtained divorce from their husbands and to provide for matters connected therewith or incidental thereto. Section 5 of the Act mentions that the parties are having an option to declare jointly, if both give consent, to be governed by either the CrPC or the new Act. Section 7 of the Act provides that every application made by the wife under section 125 or 127 CrPC pending before the magistrate on the commencement of the Act shall be disposed of in accordance with the provisions of this Act. The Court also held that the Act nowhere nullifies the orders passed under section 125. Once that order is passed, her rights are established and she gets vested right to recover maintenance allowance from her former husband. That vested right has not been taken away by Parliament.²⁹ This Act was challenged in the case of *Danial Latifi & anr. v. Union of India*.³⁰ It was decided by the Court that the Act could not be held unconstitutional as the provisions of the Act did not offend Article 14, 15 and 21 of the Constitution of India.

²⁵ V.P. Bhartiya, Syed Khalid Rashid's Muslim Law (5th edn., 2009)

²⁶ *Amir Mohd. v. Bushra* AIR 1956 Raj 102

²⁷ *Md. Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945

²⁸ AIR 1985 SC 945

²⁹ V.P. Bhartiya, Syed Khalid Rashid's Muslim Law (5th edn., 2009)

³⁰ (2001) 7 SCC 740

Alimony under Criminal Law

As per the Law Commission, primary reason and justification for placing provisions relating to maintenance to wives, children and parents which are civil in nature in the Code of Criminal Procedure is so provide more speedy and economical remedy than that available in Civil Courts is provided to them. Moreover, these provisions are aimed at preventing starvation and vagrancy leading to the commission of crime. Section 125 of Code of Criminal Procedure enacts if any person having sufficient means neglects or refuse to maintain his wife, children or parents, unable to maintain themselves, a judicial magistrate first class may order such person to pay maintenance to them at such rate as he deems fit. This section is a summary remedy which is aimed at preventing starvation, destitution and vagrancy of dependents. The principal object of this section is to secure relief to deserted and destitute wives, discarded and neglected children and disabled and helpless parents.³¹ By providing a simple, speedy and limited relief, cumbersome process of civil law is avoided by compelling those persons whose duty is to maintain their dependents who are unable to maintain themselves. As per Law Commission's 41st Report, no wife, child or parent can be left beggared and destitute on the scrap-heap of society so as to be tempted to commit crime in regard to them.³² In this provision also, it was not even thought that a man in a marriage can also be in helpless and destitute position. Because the society always thinks that a wife is the only party in a marriage who can be financially weak and can be helpless. As the result of gender polarisation, women have always been tagged as vulnerable and weaker section of the society and it is assumed that only they can be in a position in need of support.

It has been interpreted in *Avitaben v. State of Gujarat*,³³ *Chaturbhuj v. Sita Bai*,³⁴ and *Shabana Bano v. Imran Khan*³⁵ that this section has been enacted to achieve goal of social justice and is aimed to protect women, children and old parents by putting emphasis on moral and fundamental duty of a man to maintain his wife, children and parents, if they are unable to maintain themselves. It was held by the courts in various cases that section 125 is a measure of social justice and specially enacted to protect women and children which falls within the constitutional sweep of Article 15(3) reenforced by Article 39 of the Constitution. The section

³¹ Law Commission's 41st Report, Para 36.1

³² *Jagir Kaur v. Jaswant Singh* (2003), *Mohd. Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945, *Savitri v. Govind* AIR 1986 SC 984, *Savitaben v. State of Gujarat* AIR 2005 SC 108

³³ AIR 2005 SC 1809

³⁴ AIR 2008 2 SCC 316

³⁵ AIR 2010 SC 305

is intended to prevent starvation of wives deserted by their husbands, children neglected by their fathers and parents discarded by their sons. Legislation in favour of such weaker section of the society cannot be said to be arbitrary or unreasonable offending Article 14 of the Constitution.³⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023 replaces the Code of Criminal Procedure, 1973. But the contents and procedures of these provisions remain same in the sections 144 to 147.

Alimony and Maintenance in UK

Matrimonial Causes (Property and Maintenance) Act, 1958 was enacted to enable the power of the court in matrimonial proceedings to order alimony, maintenance or the securing of a sum of money to be exercised at any time after a decree; to provide of the setting aside of dispositions of property made for the purpose of reducing the assets available for satisfying such an order, to enable the court after the death of a party to marriage which has been dissolved or annulled to make provision out of his estate in favour of the party, and to extend the powers of the court under Section 17 of the Married Women's Property Act, 1882.³⁷ This Act lays down the provisions for making orders for maintenance and alimony, avoidance of disposition made to defeat wife's claim for financial relief etc.

In the UK, maintenance and alimony matters are primarily governed by the Matrimonial Causes Act, 1973. This Act was enacted to consolidate certain enactments relating to matrimonial proceedings, maintenance agreements and declarations of legitimacy, validity of marriage and British nationality, with amendments to give effect to recommendations of the Law Commission.³⁸ This Act provides the legal framework for financial provisions following the dissolution of a marriage, including spousal maintenance (often referred to as alimony). Spousal maintenance is financial support that one spouse may be required to pay to the other following separation or divorce. It is not automatically granted but depends on the receiving spouse and the ability of the paying spouse to provide support.

Part II of the Act deals with the financial relief for parties to marriage and children of family. Section 22 states that on an application for a divorcee, nullity of marriage or judicial separation order, the Court may make an order requiring either party to the marriage to make to the other

³⁶ Thamsi Goundan v. Kanni Ammal AIR 1952 Mad 529, Shammi Khan v. Sarojini 1981 CrLJ 830

³⁷ Matrimonial Causes (Property and Maintenance) Act, 1958, *available at* legislation.gov.uk

³⁸ Matrimonial Causes Act, 1973, *available at* legislation.gov.uk

such periodical payments for his or her maintenance and for such term, being a term beginning not earlier than the date of the making of the application and ending with the date of the determination of the suit, as the Court thinks reasonable. An order under this section may not require a party to a marriage to pay to the other party any amount in respect of legal services for the purposes of the proceeding.³⁹ The Civil Partnership Act 2004 was a groundbreaking piece of legislation that established a legal status for same-sex couples to form civil partnerships. The act gave same-sex couples similar legal rights to married couples. According to this Act, on an application for a dissolution, nullity or separation order, the court may make an order requiring either civil partner to make to the other for the other's maintenance such periodical payments for such term (a) beginning no earlier than the date on which the application was made, and (b) ending with the date on which the proceedings are determined, as the court thinks reasonable. Civil partners are entitled to the same property rights as married couples, the same exemption as married couples regarding social security and pension benefits, and also the ability to exercise parental responsibility for a partner's children, as well as responsibility for reasonable maintenance of one's partner and their children, tenancy rights, full life insurance recognition, next-of-kin rights in hospitals, and others. There is a formal process for dissolving civil partnerships, akin to divorce.⁴⁰

Alimony and Maintenance in Ireland

Family Law (Divorce) Act, 1996 is one of the major Acts which governs the marriage, separation, divorce, maintenance, spousal support etc. According to Section 12 of the Act, if a party applies to the court for the grant of a divorce decree, the court may make an order for maintenance pending suit, which means that one of the parties may be required to give the other spouse periodic payments or a lump sum payment for support, and, if appropriate, to give periodic payments to a person designated in the order for the benefit of any dependent family members. In the case of periodic payments, the court may determine what period of time is appropriate, starting from the date of the application and ending on the date of its determination, as deemed appropriate. Payments under an order under this section may be subject to terms and restrictions that the court determines are appropriate and explicitly states in the order.

³⁹ Matrimonial Causes Act, 1973, available at <https://www.legislation.gov.uk/ukpga/1973/18>

⁴⁰ Civil Partnership Act, 2004, available at [legislation.gov.uk](https://www.legislation.gov.uk)

According to Section 13, following the issuance of a divorce decree or at any point thereafter, the court may, upon request from either spouse or on behalf of a dependent family member, make any number of orders that may be carried out during the other spouse's lifetime or, in the case of the spouse in question, during that spouse's lifetime.

(a) a periodical payments order, meaning that one spouse shall give the other spouse periodic payments of a certain amount, during a specified period and at a specified time, or one spouse may give a specified periodical payment of a certain amount to a specified person for the benefit of a specified dependent family member, if any, during a specified period and at a specified time.

(b) secured periodical payments order, which means that one spouse will, to the satisfaction of the court, secure periodical payments of such amounts to the other spouse during the period and at the times that may be so specified, or one spouse will, to the satisfaction of the court, secure periodical payments of such amounts to the person that may be so specified for the benefit of such (if any) dependent member of the family during the period and at the times that may be so specified, or an order for one spouse to give the other one a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified, or an order for one spouse to give a lump sum payment or lump sum payments of such amount or amounts and at such time or times as may be so specified to a person as may be specified for the benefit of such (if any) dependent member of the family.

The court may order a spouse to pay a lump sum to the other spouse to meet any liabilities or expenses reasonably incurred by that other spouse before the making of an application by that other spouse for an order under subsection (1) in maintaining himself or herself or any dependent member of the family, or order a spouse to pay a lump sum to a designated person in order to cover any obligations or costs that a dependent family member reasonably paid or incurred for the benefit of the member prior to the member's application for an order under paragraph (1).

The maintenance of spouses and dependent children is covered in Part II of the Family Law (Maintenance of Spouses and Children) Act, 1976. According to Section 5 of the Act, if a spouse applies to the Court and it appears that the other spouse has not been providing the applicant spouse and any dependent children of the family with the appropriate amount of maintenance given the circumstances, the Court may issue an order (referred to as a

maintenance order in this Act) directing the other spouse to make periodic payments to the applicant spouse for the support of the applicant spouse and each dependent child of the family for the duration of the applicant spouse's lifetime, of such amount and at such times, as the Court may think fit. Where a spouse is dead or deserted or has been deserted by the other spouse or is living separately and apart from the other spouse and there are dependent children of the family (not being children who are being fully maintained by either spouse), then, if it appears to the Court, on application to it by any person, that the surviving spouse or, as the case may be, either spouse has failed to provide such maintenance for any dependent children of the family as is proper in the circumstances, the Court may make an order (in this Act referred to as a maintenance order) that that spouse make to that person periodical payments, for the support of each of those dependent children, for such period during the lifetime of that person, of such amount and at such times, as the Court may consider proper. A maintenance order or variation order must outline every portion of the payment under the order that is intended to support a dependent child. It can also specify the time frame within which the person applying for the order must live in order for the order's portion of the payment to be made toward the support of the dependent child to be made. When one spouse has abandoned and is still abandoning the other, the court will not grant maintenance for the support of the remaining spouse.

Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 provides financial protection for civil partners. The term "civil partner" is defined as either of the two people of the same sex who are parties to a civil partnership registration that has not been dissolved or the subject of a decree of nullity, or as parties to a legal relationship of a class that is the subject of an order made under section 5 that has not been dissolved or the subject of a decree of nullity, per section 3 of the Civil Partnership Act and Certain Rights and Obligations of Cohabitants Act, 2010. Part 5 of the Act governs civil partner maintenance. Where it appears to the court, on application to it by a civil partner, that the other civil partner has failed to provide maintenance for the applicant that is proper in the circumstances, the court may make an order that the other civil partner make to the applicant periodical payments for the support of the applicant, for the period during the lifetime of the applicant, of the amount and at the times that the court may consider proper. A maintenance order for the support of an applicant who has abandoned and is still abandoning their other civil partner cannot be granted by the court unless it determines that, in all the circumstances, including the other civil partner's

behaviour, it would be unjust to deny the request.⁴¹ The court, in deciding whether to make a maintenance order and, if it decides to do so, in determining the amount of any payment, shall have regard to all the circumstances of the case including — (a) the income, earning capacity, property and other financial resources of the civil partners, including income or benefits to which either civil partner is entitled by or under statute, (b) the financial and other responsibilities of the civil partners towards each other, each civil partner as a parent towards any dependent children, and the needs of any dependent children, including the need for care and attention, and each civil partner towards any former spouse or civil partner, and the conduct of each of the civil partners, if that conduct is such that, in the opinion of the court, it would in all the circumstances be unjust to disregard it.⁴²

Alimony and Maintenance in Canada

The Divorce Act in Canada regulates the process of divorce and all issues related to marriage dissolving, including spousal support. Spousal support in Canada is intended to achieve a certain objective. If one spouse gave up their ability to earn a living during the marriage, the court directs the other to pay alimony to the first spouse. Put another way, if they fulfil certain conditions, a spouse who chooses to stay at home and forego professional prospects in order to assist their partner may apply for and be granted spousal support. Furthermore, the spouses who takes over the care of children, including their education and upbringing, can ask for alimony in Canada. Finally, if a spouse is in a dire financial situation following a divorce, they can also file for maintenance under Canadian Law.⁴³

Section 15.2 of the Divorce Act defines spousal support as a sum of money one spouse pays or secures to the other spouse for their support after separation or divorce. Also known as alimony or maintenance, spousal support can take the form of monthly or lump sum payments.⁴⁴

According to sub-section 1 of Section 15.2, a Court of competent jurisdiction may, on application by either or both spouses, make an order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums or such lump sum and periodic sums, as the

⁴¹ Civil Partnership Act and Certain Rights and Obligations of Cohabitants Act, 2010, *available at* <https://www.irishstatutebook.ie/eli/2010/act/24/section/45/enacted/en/html#sec45>

⁴² *ibid*

⁴³ Spousal Support in Canada Section 15.2, by Jack Haller, *available at* <http://www.hallerlaw.ca/spousal-support-in--canada>

⁴⁴ *ibid*

Court thinks reasonable for the support of the other spouse. Sub-section (2) to section 15.2 states that where an application is made under sub-section (1), the Court may, on an application by either or both the spouses, make an interim order requiring a spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, as the Court thinks reasonable for the support of the other spouse. As per sub-section (3), the Court may make an order under sub-section (1) or an interim order under sub-section (2) for a definite or indefinite period or until a specified event occurs, and may impose terms, conditions or restrictions in connection with the order as it thinks fit and just.⁴⁵

In making an order under sub-section (1) or an interim order under sub-section (2), the Court shall take into consideration the condition, means, need and other circumstances of each spouse, including, (a) the length of the time the spouse cohabited; (b) the functions performed by each spouse during cohabitation and (c) any order, agreement or arrangement relating to support of either spouse. Under the Divorce Act, both spouses can file for spousal support after divorce. Generally in practice, a spouse with a lower income applies for alimony. When making the decision to award spousal support, judges take into account a number of factors. What matters most is each spouse's financial status. Divorced spouses may find themselves in varied situations based on their income. They may also have different needs. The choice of spousal support may also be influenced by other personal factors. The length of the marriage and each spouse's roles will next be taken into account by the judge. Long-term married couples are more likely to receive alimony, but this is not always the case. While their spouses seek employment, many wives dedicate their time to raising their children. The Court gives particular consideration to the mother's position because it impacts their ability to make money if they choose to stay at home and not participate in the workforce. Because spousal support can be set up through an agreement between spouses or because there may be an antecedent alimony court judgment, these arrangements can establish who is eligible to receive spousal support. The Divorce Act states unequivocally that the Court may not deny an application for a spousal maintenance order on the grounds of marital misbehaviour.

⁴⁵ Spousal Support in Canada Section 15.2, by Jack Haller, *available at* <http://www.hallerlaw.ca/spousal-support-in-canada>

ALIMONY AND MAINTENANCE LAWS IN INDIA, UK, CANADA AND IRELAND

- GENDER NEUTRAL - UK, CANADA AND IRELAND
- NOT GENDER NEUTRAL - INDIA

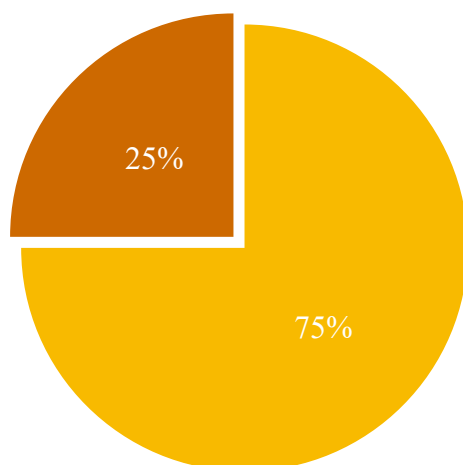


FIGURE 1

- UNIFORMED LAWS - UK, CANADA AND IRELAND
- NOT UNIFORMED LAWS - INDIA

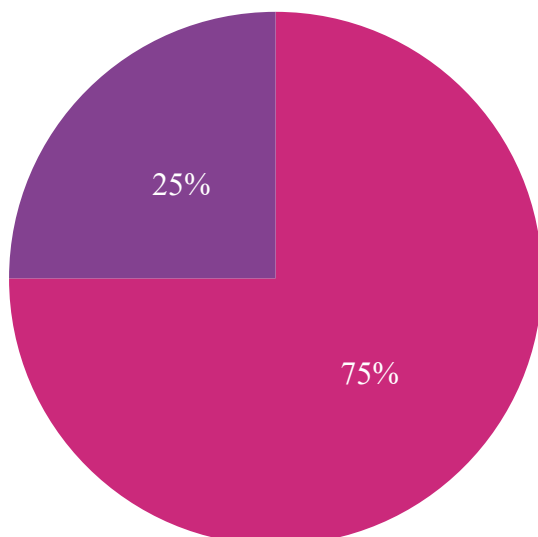
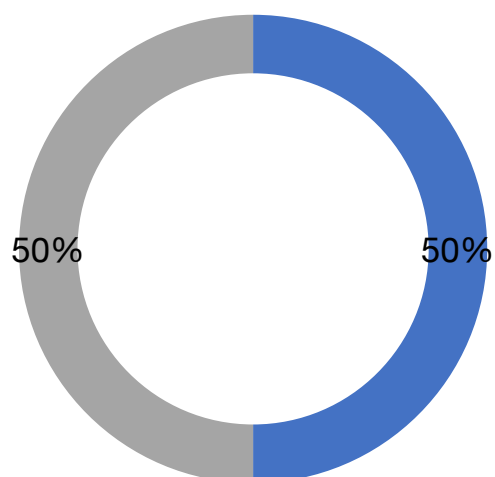


FIGURE 2

FIGURE 3

- PROTECTS CIVIL PARTNERS - UK AND IRELAND
- DOES NOT PROTECT CIVIL PARTNERS - INDIA AND CANADA



CONCLUSION AND SUGGESTIONS

After a thorough study of the laws regarding alimony and maintenance in India, UK, Canada and Ireland, it can be stated that laws of UK and Ireland include certain provisions which go towards attainment of substantial equality. Including provisions for the rights of maintenance and alimony irrespective of gender in a marriage lock or in civil partnership shows the effort of attaining equality in true sense. Canadian laws also give the right to claim alimony and maintenance to both the spouses in a wedlock. India and its people came a long way to attain gender equality. To erase discrimination on the ground of sex, major steps have been taken. Constitutional amendments, adoption of new policies, enactment of new laws, overruling of old judgments etc. are few examples of those steps. But it is surprising and shocking at the same time to know that inequality still remains in almost every home in India. Inequality in marriage is the biggest example of it. Indian patriarchal society, since the very beginning, has imposed attitudes and behaviours on human beings on the basis of sex which always affected the institution of marriage, laws relating to marriage, divorce and alimony. Despite the Constitution of India, considering all men and women as equal entities, there still exist some laws and legislations in the country that remain partial to a particular gender. The branch of alimony laws in India is one of those.

The majority of legal systems acknowledge the wife's unique status in her husband's household. In the patrilineal family structure, management of the husband's household has been the main task of the wife. The patriarchal society did not contemplate and consider it to be her role or duty to be engaged in the earning of wealth. In the modern society also, most wives are still financially dependent on their husbands. This is reflected in law by the rule that wife can pledge the credit of her husband for necessities. Most systems of law recognise the direct obligation of the husband to maintain his wife so long as marriage subsists and his wife remains faithful. In the modern legal system, the responsibility exists even after the dissolution of marriage.⁴⁶

Here are certain suggestions which might strengthen the laws relating to alimony and maintenance in India.

1. Need for gender neutrality

To attain substantial equality, right to claim alimony and maintenance must be given to both the spouses. The principle of equality has been reflected only in the provisions of the Parsi Marriage and Divorce Act, 1936 and the Hindu Marriage Act, 1955. These provisions allow both the parties to a marriage to move before the court for filing a maintenance petition and get support. On the other hand, provisions of Hindu Adoption and Maintenance Act, 1956; Muslim Personal Laws, Special Marriage Act, 1954; Section 125 of Code of Criminal Procedure; the Indian Divorce Act allow a wife and only a wife to claim maintenance. Many of these laws were made ages ago. Structure of society, structure of family, opportunities, mentality and thoughts of people were different. Illegitimate hierarchy played a negative role in a family throughout years and decades. Now, everything came forward but certain laws. Thus, amendments needed to bring parity in the laws.

2. Need for Uniformity

The divorce and maintenance laws in India are complex and neither gender-neutral nor religion-neutral. Grounds for divorce under the Hindu Marriage Act, 1955 are different from personal laws for Muslims, Parsis and Christians. For instance, adultery can be grounds for divorce for Hindus but not Muslims. With respect to maintenance and alimony, it constitutes the 'only source of livelihood' for many. The inconsistent personal laws governing the issues

⁴⁶ Dr Paras Diwan, *Modern Hindu Law* (21st edn. 2012)

of divorce, maintenance and alimony is discriminatory. Hence, gender and religion-neutral divorce, maintenance and alimony laws are absolutely needed.

3. Protection for Same Sex Couples

Same-sex couples do not have a right to maintenance, since their marriage is not legalised in India, they cannot ask for maintenance. Under the law, maintenance can be granted to a married couple which removes homosexual couples from having the right to maintenance. But consensual homosexual relations are now perfectly valid as per the judgment of the Honourable Apex Court⁴⁷ and hence all such rights that are enjoyed by heterosexual couples must be extended to homosexual couples as well. One such right is the right to claim maintenance.

4. Awareness through Entertainment

It is important to aware people and to make them understand that rights and duties correlate. Without sharing the responsibilities, equality can not be achieved in rights. In India, 547.3 million users are there of OTT platforms which is 38.4% of Indian population. 14% users increased in 204 as compared to 2023. Television dominance is existing. It remains the highest reach medium In India, demonstrating its continuous importance in the country's media consumption. Entertainment is the easiest way to reach to the maximum number of a people and to aware them about the rights and duties, privileges and responsibilities of a person.

5. Implementation of Legal Education in School

Introducing legal education in schools can play a vital role in shaping the mindset of future generations. Understanding the law from an early age can foster a sense of equality and justice, and help dismantle outdated societal norms related to gender roles and responsibilities. Legal education can teach students the importance of equal rights and responsibilities, regardless of gender. It can help in fostering an inclusive environment where everyone is viewed as equal, including spouses in a marriage. By understanding their rights and responsibilities, students become empowered to stand up for themselves and others. This knowledge can lead to more active participation in civic duties and decision-making processes.

⁴⁷ Navtej Singh Johar v. Union of India (2018)