
ROLE OF THE INDIAN JUDICIARY FOR THE PROTECTION OF WIVES' MAINTENANCE RIGHTS

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ABSTRACT

The right of maintenance occupies a pivotal position in Indian family law, embodying the State's commitment to ensuring economic justice and dignity for women whose marital relationships break down. The promulgation of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), replacing the Code of Criminal Procedure, 1973, has reformulated the secular maintenance framework under Section 144, while the substantive entitlements of married women continue to be regulated by religiously diverse personal laws. This article undertakes a comparative doctrinal analysis of maintenance rights of wives under the BNSS and the principal personal-law statutes—the Hindu Marriage Act, 1955, the Hindu Adoptions and Maintenance Act, 1956, the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, and the Special Marriage Act, 1954. It engages critically with landmark judgments, including *Mohd. Ahmed Khan v. Shah Bano Begum*, *Danial Latifi v. Union of India*, *Rajnish v. Neha*, and the recent decision in *Mohd. Abdul Samad v. State of Telangana*. The article identifies persistent fault-lines in maintenance jurisprudence including chronic procedural delays, the absence of a fixed formula for quantum, strategic non-disclosure of income, multiplicity of forums, and the challenges thrown up by the digital transformation of litigation. It concludes with a set of normative recommendations directed at procedural reform, doctrinal clarity, and the realisation of substantive equality.

Keywords: Maintenance, BNSS, Section 144, Personal Laws, *Rajnish v. Neha*, *Shah Bano*, Gender Justice, Article 15, Substantive Equality.

I. INTRODUCTION

The right of maintenance lies at the very heart of the protective architecture of Indian family law. It reflects a centuries-old social conviction that the disintegration of a marital relationship should not, *ipso facto*, condemn the dependent spouse to destitution. In its modern Indian form, however, the law of maintenance is not unitary. It is the product of two parallel currents: a secular, religion-neutral statutory regime—now embodied in Section 144 of the *Bharatiya Nagarik Suraksha Sanhita*, 2023¹—and a plurality of personal laws that govern marital obligations on the basis of the parties' religious affiliation. This pluralistic structure, while reflecting the constitutional commitment to religious freedom under Articles 25 and 26 of the Constitution of India, has produced significant divergences in the substantive and procedural treatment of maintenance, occasioning judicial intervention to harmonise the framework with the constitutional vision of substantive equality.

The promulgation of the BNSS, 2023, replacing the Code of Criminal Procedure, 1973, has reignited interest in the procedural and substantive contours of maintenance in India. While the BNSS has retained the essential structural skeleton of the erstwhile Section 125 CrPC², the personal laws applicable to Hindus, Muslims, Christians, Parsis, and parties to civil marriages continue to operate as parallel substantive regimes. Each of these regimes carries its own conceptual vocabulary, eligibility thresholds, and limits on the duration and quantum of maintenance. The judiciary, operating at the intersection of these regimes, has generated a rich body of case law—epitomised by the landmark Constitution Bench in *Danial Latifi v. Union of India* and the comprehensive guidelines laid down in *Rajnish v. Neha*³—that has progressively shaped maintenance jurisprudence into a coherent framework rooted in dignity, equality, and social justice.

Against this backdrop, the present article undertakes a comparative analysis of the maintenance rights of wives under the BNSS and the personal laws, examining their statutory contours, the role of the higher judiciary in harmonising them, and the contemporary challenges that confront the maintenance regime in the twenty-first century. The article proceeds in eight parts. Part II traces the historical and conceptual foundations of maintenance. Part III analyses the framework under Section 144 of the BNSS. Part IV examines the personal-law regimes.

¹ Bharatiya Nagarik Suraksha Sanhita 2023, s 144 (replacing s 125 of the Code of Criminal Procedure 1973).

² Code of Criminal Procedure 1973, s 125 (now substantively reproduced in s 144 of the BNSS 2023).

³ *Rajnish v. Neha*, (2021) 2 SCC 324.

Part V undertakes a comparative analysis of the substantive and procedural distinctions. Part VI engages with the principal judicial interventions, including the recent decision in *Mohd. Abdul Samad v. State of Telangana*. Part VII identifies the contemporary challenges, and Part VIII concludes with reform-oriented recommendations.

II. CONCEPTUAL FOUNDATIONS AND HISTORICAL EVOLUTION

The concept of maintenance, or *nafaqa* as it is known in Islamic jurisprudence, and *bharanaposhana* in classical Hindu law, is rooted in the mutual obligations of spouses arising from the institution of marriage. Manu observed that a husband must maintain his wife, who is regarded as half his body, and that the protection of dependants was both a moral and a *dharmic* duty⁴. Yajnavalkya and other classical commentators articulated the duty in similar terms, regarding the wife's right of maintenance as a corollary of the husband's guardianship and the sacramental conception of marriage. Similarly, the husband's duty of *nafaqa* under classical Islamic law extended to the provision of food, clothing, and shelter, and was held to be unconditional during the subsistence of the marriage and during the period of *iddat* following divorce⁵. The Hanafi school traditionally restricted the entitlement to post-*iddat* maintenance, while the Shafi school adopted a more liberal approach. These doctrinal differences have echoed through modern statutory and judicial engagements with the question.

The colonial period witnessed the codification of these principles through religiously segregated statutes. The Indian Divorce Act, 1869, applicable to Christians, introduced statutory provisions for alimony pendente lite and permanent alimony⁶. The Parsi Marriage and Divorce Act, 1936, made similar provision for Parsis⁷. On the secular side, Section 488 of the Code of Criminal Procedure, 1898, introduced the first religion-neutral, summary remedy for maintenance, designed to prevent vagrancy and destitution. This provision was carried forward into Section 125 of the Code of Criminal Procedure, 1973, and now finds expression in Section 144 of the BNSS, 2023.

The post-independence legislative project sought to harmonise personal laws with the

⁴ Manu, *Manusmriti*, ch 9, vv 45 and 95; see Paras Diwan, *Modern Hindu Law* (24th edn, Allahabad Law Agency 2019) 165–167.

⁵ Tahir Mahmood, *Muslim Law of India* (4th edn, LexisNexis 2012) 212–220; Asaf A.A. Fyzee, *Outlines of Muhammadan Law* (5th edn, OUP 2008) 184–189.

⁶ Indian Divorce Act 1869, ss 36 and 37.

⁷ Parsi Marriage and Divorce Act 1936, ss 39 and 40.

constitutional vision of equality, dignity, and social justice. The Hindu Marriage Act, 1955, and the Hindu Adoptions and Maintenance Act, 1956, codified Hindu personal law in matrimonial and family matters. The Special Marriage Act, 1954, provided a secular alternative for inter-faith and civil marriages. The Muslim Women (Protection of Rights on Divorce) Act, 1986, was enacted in the immediate aftermath of the political controversy generated by *Shah Bano* and represents Parliament's attempt to legislate a community-specific maintenance regime for divorced Muslim women⁸. Layered upon these statutory frameworks is the Protection of Women from Domestic Violence Act, 2005, which provides a further procedural avenue for monetary relief, including maintenance⁹.

III. MAINTENANCE UNDER THE BNSS, 2023

Section 144 of the BNSS, 2023, occupies the position once held by Section 125 of the CrPC, 1973. Its structure is largely preserved, with modest procedural adjustments. The provision empowers a Magistrate of the First Class, upon proof of neglect or refusal to maintain, to direct any person of sufficient means to make a monthly allowance for the maintenance of his wife (including a divorced wife who has not remarried), legitimate or illegitimate minor children, major children unable to maintain themselves on account of physical or mental abnormality or injury, and parents who are unable to maintain themselves¹⁰.

Several features of the provision merit emphasis. First, the provision is religion-neutral and applicable to all citizens irrespective of personal law. Second, the proceedings are summary in nature and conceived as quasi-criminal, designed to provide quick interim relief without awaiting the conclusion of matrimonial litigation. Third, the term “wife” includes a divorced wife who has not remarried—an extension first recognised in the Explanation to Section 125 CrPC and continued in Section 144 BNSS. Fourth, the cap on quantum of maintenance, originally fixed at five hundred rupees per month and abolished by the Code of Criminal Procedure (Amendment) Act, 2001, is no longer present, leaving the Magistrate full discretion to fix maintenance commensurate with the husband's means and the wife's reasonable requirements¹¹. Fifth, the BNSS expressly contemplates interim and ad-interim maintenance,

⁸ Muslim Women (Protection of Rights on Divorce) Act 1986; see Flavia Agnes, *Family Law and Constitutional Claims* (vol 1, OUP 2011) 121–145.

⁹ Protection of Women from Domestic Violence Act 2005, s 20.

¹⁰ BNSS 2023, s 144(1); see also the Explanation defining ‘wife’ to include a divorced woman who has not remarried.

¹¹ Code of Criminal Procedure (Amendment) Act 2001 (No 50 of 2001), s 2.

with directions for prompt disposal of applications. Sixth, enforcement is by way of recovery as a fine, and in default, by imprisonment for up to one month for each month of arrears.

The Supreme Court has consistently emphasised that maintenance under Section 125 CrPC—and now Section 144 BNSS—is rooted in social justice and the constitutional commitment to prevent destitution, rather than in any contractual or fault-based premise. In *Bhuwan Mohan Singh v. Meena*, the Court underscored that a wife driven to seek maintenance through judicial process is, *ipso facto*, in a vulnerable position, and that such proceedings must be disposed of expeditiously to prevent the very purpose of the provision from being defeated¹². The Court has likewise clarified that the existence of a remedy under personal law does not preclude an application under Section 125 CrPC, the two being concurrent rather than mutually exclusive¹³.

IV. COMPARATIVE ANALYSIS

A comparative reading of the BNSS and the personal laws reveals significant convergence on certain core principles, but also persistent divergences that have shaped the litigation landscape. Three axes of comparison merit particular attention: the nature of the proceedings, the conceptual basis of entitlement, and the determination of quantum and duration.

On the first axis, the proceedings under Section 144 BNSS are quasi-criminal and summary, designed to be disposed of within a defined timeframe. By contrast, proceedings under Sections 24 and 25 of the HMA, Section 18 of the HAMA, Sections 36 and 37 of the IDA and Special Marriage Act, and Sections 39 and 40 of the PMDA are civil in nature and subject to the more elaborate procedure of the Code of Civil Procedure, 1908. As a consequence, the substantive scrutiny in matrimonial proceedings is typically deeper, but the delays correspondingly longer. The Supreme Court has, in *Rajnish v. Neha*, attempted to harmonise the procedural divergences by mandating uniform disclosure affidavits, common factors for quantum, and execution mechanisms¹⁴.

On the second axis, the conceptual basis of the BNSS regime is the prevention of vagrancy and destitution: the focus is on the wife's inability to maintain herself and the husband's neglect

¹² *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353, paras 6–9.

¹³ *Nanak Chand v. Chandra Kishore Aggarwal* (1969) 3 SCC 802, para 6; *Ramesh Chander Kaushal v. Veena Kaushal* (1978) 4 SCC 70.

¹⁴ *Rajnish v. Neha*, (2021) 2 SCC 324, paras 75–90.

or refusal. By contrast, the personal laws treat maintenance as an incident of marriage, flowing from the marital tie itself; the question of fault is admitted in nuanced form, for instance, in the Section 18(2) HAMA grounds and the conduct factor under Section 25 HMA. This conceptual difference explains why the BNSS regime is available to a wider class of women—including divorced wives who have not remarried—whereas personal-law rights tend to be circumscribed by the validity and continuance of the marriage.

On the third axis, none of the statutes prescribes a fixed formula for quantum. The BNSS and the personal laws alike use the language of “sufficient means”, “reasonable wants”, “position and status”, and “standard of living”. Judicial benchmarks have nevertheless emerged: in *Kalyan Dey Chowdhury v. Rita Dey Chowdhury*, the Supreme Court endorsed twenty-five per cent of the husband's net salary as a reasonable benchmark, while emphasising that no rigid formula could be applied¹⁵. In *Rajnish v. Neha*, the Court enumerated the relevant factors for fixing quantum: the status of the parties, reasonable needs, dependants, qualifications, employment status of the wife, independent income or assets, the standard of living during the subsistence of the marriage, litigation expenses, and the husband's earning capacity, liabilities, and actual income¹⁶.

V. JUDICIAL PERSPECTIVES: GUIDING PRINCIPLES

The Indian higher judiciary has played a decisive role in synthesising the maintenance regimes and in harmonising them with constitutional values. Five interrelated themes emerge from the case law.

First, the doctrine of expedition. In *Bhuwan Mohan Singh v. Meena*, the Supreme Court held that maintenance proceedings ought to be disposed of within a defined timeframe and that procedural delay defeats the very purpose of the provision. The Court has reiterated this position in successive decisions, recognising that the social-welfare character of Section 125 CrPC (now Section 144 BNSS) requires expeditious adjudication.

Second, the principle of full and fair disclosure. In *Rajnish v. Neha*, the Supreme Court mandated that both parties file an Affidavit of Disclosure of Assets and Liabilities at the threshold of maintenance proceedings, in a format prescribed by the Court. The disclosure

¹⁵ *Kalyan Dey Chowdhury v. Rita Dey Chowdhury*, (2017) 14 SCC 200, para 13.

¹⁶ *Rajnish v. Neha*, (2021) 2 SCC 324, paras 95–102.

regime operates as a procedural instrument designed to address the chronic problem of strategic non-disclosure and hidden income. Failure to comply may attract the doctrine of imputed income and adverse inference¹⁷.

Third, the principle of substantive equality and earning capacity. In *Sunita Kachwaha v. Anil Kachwaha*, the Court held that the mere fact that a wife is qualified is insufficient to deny her maintenance, particularly where she is unemployed or her earnings are insufficient to maintain the standard of living during the subsistence of the marriage¹⁸. This doctrine has been refined in *Chaturbhuj v. Sita Bai*, which clarified that the words “unable to maintain herself” do not mean absolute destitution; the standard is one of inability to maintain a lifestyle commensurate with the matrimonial status¹⁹.

Fourth, the principle of harmonisation with personal laws. In *Danial Latifi*, the Court harmonised the 1986 Act with constitutional values by reading the phrase “reasonable and fair provision” to extend beyond the *iddat* period. In *Mohd. Abdul Samad*, the Court has reiterated that the secular and personal-law remedies are concurrent and that a divorced Muslim woman cannot be denied recourse to the secular remedy by reference to the existence of the 1986 Act.

Fifth, the doctrine of “wife” and validity. The Supreme Court has navigated the difficult question of who is a “wife” for purposes of Section 125 CrPC and Section 144 BNSS. In *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, the Court held that a woman whose marriage is void on account of the subsistence of an earlier marriage of the husband is not a “wife” for purposes of Section 125²⁰. This restrictive view has, however, been progressively softened in subsequent decisions including *Chanmuniya v. Virendra Kumar Singh Kushwaha*²¹, and *Badshah v. Urmila Badshah Godse*, in which the Court held that a wife who entered into the marriage in good faith without knowledge of the husband's prior subsisting marriage was entitled to maintenance²². The Domestic Violence Act, 2005, and the doctrine of “relationship in the nature of marriage” crystallised in *D. Velusamy v. D. Patchaiammal*, have further widened the protective sweep²³.

¹⁷ *Rajnesh v. Neha* (2021) 2 SCC 324, paras 78–82, with the prescribed Affidavit at Annexure 1

¹⁸ *Sunita Kachwaha v. Anil Kachwaha*, (2014) 16 SCC 715.

¹⁹ *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316, paras 6–8.

²⁰ *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, (1988) 1 SCC 530.

²¹ *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141.

²² *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188, paras 13–15.

²³ *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469, paras 31–33.

VI. CONTEMPORARY CHALLENGES

Despite the rich body of jurisprudence and the procedural reforms occasioned by *Rajnesh*, several contemporary challenges continue to shape the maintenance landscape in India.

First, the chronic problem of delay. Maintenance applications, despite the statutory imperative of expedition, frequently languish for years. The very purpose of preventing destitution is defeated where interim relief is granted long after the application. Trial courts continue to operate without dedicated maintenance cells, and the execution of orders is hampered by inadequate procedural infrastructure for attachment and recovery.

Second, strategic non-disclosure and hidden income. Husbands often understate income or operate within the cash economy. The Affidavit of Disclosure mandated by *Rajnesh* has improved transparency but has not eliminated the problem. Courts have increasingly resorted to the doctrine of imputed income—drawing inferences from lifestyle, social media presence, and consumption patterns—to approximate the husband's true means. The challenge of digital evidence under the *Bharatiya Sakshya Adhinyam*, 2023, is yet to be fully addressed²⁴.

Third, quantum without formula. The absence of a fixed formula for quantum, despite the *Rajnesh* factors, leaves wide judicial discretion and produces inconsistent outcomes across courts. Empirical studies have documented significant variance in the quantum awarded for similarly placed parties, raising concerns of predictability and fairness²⁵. The Indian framework would benefit from comparative engagement with the income-share approach in the United States, the formula-based child and spousal maintenance regimes in the United Kingdom, and the Spousal Support Advisory Guidelines in Canada.

Fourth, multiplicity of forums and parallel proceedings. A wife may simultaneously seek maintenance under Section 144 BNSS, Section 24 or 25 HMA, Section 18 HAMA, and Section 20 of the Domestic Violence Act, 2005. The result is a fragmented adjudicative landscape with the risk of conflicting orders and forum shopping. The Supreme Court has, in *Rajnesh*, directed disclosure of pending and decided proceedings under any other law, but a consolidated single-window forum is yet to emerge.

²⁴ Bharatiya Sakshya Adhinyam 2023, ss 61–63 (electronic records).

²⁵ See generally Centre for Civil Society, 'Quantum of Maintenance: An Empirical Study of Indian Courts' (2022) 9 Indian Journal of Family Law 12.

Fifth, the digital era. Service of process, virtual hearings, e-filing, and the use of social media and digital evidence are reshaping maintenance litigation. Courts have begun to admit screenshots, mobile location data, and bank statements obtained through digital platforms as evidence of lifestyle and income. The framework is still evolving and would benefit from clear procedural guidance under the BNSS and the Bharatiya Sakshya Adhiniyam, 2023.

Sixth, gender-neutral debates and earning capacity. Section 24 of the HMA is gender-neutral, while Section 144 BNSS and Section 18 HAMA continue to be gendered. The debate over gender neutrality of maintenance under all regimes is gaining traction, particularly in the context of Article 15(3) of the Constitution, which permits the State to make special provision for women and children²⁶. The doctrine of earning capacity, while protective, has its critics who argue that it disincentivises labour-market participation by wives. The challenge is to calibrate the doctrine in a way that supports re-skilling and re-employment without sliding into a punitive imputation regime.

Seventh, validity, void marriages, and live-in relationships. The continuing tension between the strict reading of “wife” in *Yamunabai* and the more inclusive readings in *Badshah* and *Velusamy* produces uncertainty for women in void or voidable marriages and in live-in relationships. The Domestic Violence Act, 2005, has alleviated the problem for many such women, but the BNSS framework still requires doctrinal clarification.

VII. CONCLUSION AND SUGGESTIONS

The Indian framework for maintenance is animated by a pluralistic structure that seeks to balance religious diversity with the constitutional commitment to gender justice. The BNSS, 2023, by retaining and modestly updating the secular maintenance framework under Section 144, continues to provide an essential safety net for women across communities. The personal laws, reformed and reinterpreted through judicial creativity, supplement and deepen this protection. Yet, several deficits remain: chronic delays, the absence of a principled formula, strategic non-disclosure, fragmented forums, and an uneven judicial approach to the validity question.

The way forward must include, *first*, procedural reform centred on time-bound disposal,

²⁶ Constitution of India, art 15(3); see *Government of NCT of Delhi v. Union of India* (2018) 8 SCC 501 on the role of constitutional values in interpreting protective legislation.

mandatory disclosure with meaningful consequences for non-compliance, and dedicated maintenance benches in family courts; *second*, the development of quantum guidelines—either by the legislature or through the Supreme Court—drawing on comparative experience and empirical research; *third*, the consolidation of overlapping remedies into a single-window forum to reduce parallel proceedings and forum shopping; *fourth*, investment in digital infrastructure for e-filing, video hearings, and the admission of digital evidence; *fifth*, commissioned empirical research on quantum disparities, recovery rates, and litigation timelines to inform reform; and *sixth*, an ongoing constitutional dialogue between secular and personal laws to ensure that the right to live with dignity under Article 21 is given substantive content for every woman²⁷.

Maintenance jurisprudence in India must, in the final analysis, evolve from a regime of dependency to one of dignity. The constitutional promise of substantive equality is not realised by a formal right to claim maintenance alone; it requires a procedural framework that delivers timely, adequate, and enforceable relief. The BNSS, 2023, represents a procedural moment of opportunity. Whether that opportunity is harnessed will depend on the willingness of courts, legislatures, and the Bar to engage with maintenance not as a peripheral matrimonial remedy but as a foundational instrument of social justice.

²⁷ Constitution of India, art 21; see *Maneka Gandhi v. Union of India* (1978) 1 SCC 248 and *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545 on the substantive content of the right to life under Article 21.