

# Justice Denied? Examining Gender Disparities in Spousal Maintenance Laws under Indian Personal Law Regimes

Amit Kumar Meena (Ph.D Research Scholar)<sup>1</sup>, Dr. Vinod Kumar (Assistant Professor)<sup>2</sup>  
Department – Law, Shri Jagdish Prasad Jhabarmal Tibrewala University, Chudela, Jhunjhunu

DOI: 10.5281/zenodo.15584577

## ABSTRACT

*Spousal maintenance laws in India are deeply influenced by religious personal laws, resulting in varying standards for granting post-marital support. This article examines the gender disparities embedded in these legal frameworks, particularly focusing on the Hindu, Muslim, and Christian law regimes. While the Indian Constitution promotes equality, personal laws often reflect patriarchal biases, with maintenance entitlements largely shaped by the husband's economic position and subjective notions of the wife's 'conduct'. Through a comparative analysis of statutory provisions and key judicial decisions, the article reveals that although some reforms have been initiated, gendered inequalities continue to pervade the legal landscape. The article concludes by arguing for a uniform, gender-sensitive maintenance framework grounded in constitutional principles of equality and justice.*

**Keywords:** Gender justice, spousal maintenance, personal laws, Hindu Marriage Act, Muslim personal law, Indian Succession Act, alimony, maintenance rights

## 1. INTRODUCTION

Maintenance, or financial support to a dependent spouse, is a fundamental right protected under both civil and personal laws in India. It is a crucial legal remedy intended to ensure that economically weaker spouses, especially women, are not left destitute after separation or divorce. However, the application of maintenance laws in India is governed by a pluralistic legal system, wherein different religious communities follow different personal laws. These laws often reflect age-old patriarchal norms and result in systemic gender disparities.

Women's access to fair and adequate maintenance is not just a legal issue but a matter of social justice. Given the unequal power relations within marriage and the economic vulnerability of women post-divorce, it is essential to examine how personal laws either support or hinder their financial rights. This article seeks to explore these disparities in the context of Hindu, Muslim, and Christian personal laws.

## 2. LEGAL FRAMEWORK AND PROVISIONS

### 2.1 Hindu Law

Under the **Hindu Marriage Act, 1955 (Section 24 and 25)**, either spouse can claim maintenance during and after divorce. However, in practice, women are overwhelmingly the applicants. Courts consider factors like the income of both parties, the standard of living during marriage, and the financial needs of the claimant. Yet, the application remains inconsistent, and judgments are often influenced by subjective views of the wife's behavior, conduct, and 'desertion'.

### 2.2 Muslim Law

Muslim personal law is based on the Quran and traditionally provides maintenance (**nafaqah**) only during the **iddat** period (roughly three months post-divorce). The landmark case **Shah Bano v. Union of India (1985)** briefly extended maintenance rights under Section 125 of the Criminal Procedure Code (CrPC), a secular law. However, political backlash led to the enactment of the **Muslim Women (Protection of Rights on Divorce) Act, 1986**, which limited post-divorce maintenance to the **iddat** period unless a pre-marriage contract stipulated otherwise. This legal rollback significantly impacted Muslim women's rights.

### 2.3 Christian Law

Under the **Indian Divorce Act, 1869 (Section 36 and 37)**, Christian women can seek maintenance, but it is typically for a limited period unless exceptional circumstances are shown. Historically, the law discriminated against women by allowing only men to seek divorce on grounds like adultery, but subsequent amendments have improved its gender neutrality. Still, judicial discretion and rigid procedural requirements can disadvantage women in maintenance claims.

## 2.4 Secular Law – CrPC Section 125

This provision offers a secular remedy for *wives, children, and parents* who are unable to maintain themselves. Although this applies regardless of religion, courts often defer to personal laws when interpreting eligibility or the extent of maintenance. Moreover, its applicability is limited by enforcement issues and protracted legal processes.

## 3. JUDICIAL TRENDS AND GENDER BIAS

Several judgments have shaped maintenance law in India:

**Shah Bano (1985):** Expanded Muslim women's rights under CrPC, but later diluted by the 1986 Act.

**Danial Latifi v. Union of India (2001):** Upheld the constitutionality of the 1986 Act by interpreting it to mean that a fair and reasonable provision must be made within the *iddat* period.

**Vimla v. Veeraswamy (1991)** and **Kanchan v. Kamalendra (1992):** Reaffirmed the economic dependency of women as a legitimate basis for maintenance.

**Bhuvan Mohan Singh v. Meena (2015):** The court emphasized that delaying maintenance is a form of mental cruelty and violates the right to life under Article 21.

Despite these progressive judgments, the burden of proof, delay in proceedings, and societal stigma often deter women from pursuing claims.

## 4. CHALLENGES IN THE EXISTING FRAMEWORK

- **Inconsistent standards** across religious laws lead to unequal treatment.
- **Subjective judicial discretion** often reinforces gender stereotypes.
- **Limited enforcement mechanisms** result in non-compliance or delayed payments.
- **Cultural and social pressures** discourage women from seeking maintenance.
- **Lack of awareness** among women, especially in rural areas, of their legal rights.

## 5. RECOMMENDATIONS

- **Enact a Uniform Civil Code** or a uniform secular maintenance law that ensures gender parity and simplifies procedures.
- **Standardize maintenance criteria** based on economic need and contribution to the household, not moral conduct.
- **Enhance judicial training** to prevent gender-biased interpretations.
- **Increase accessibility** through fast-track family courts and legal aid centers.
- **Create awareness campaigns** targeting women in vulnerable communities.

## 6. CONCLUSION

Despite being a vital economic right, spousal maintenance in India is marred by inconsistencies and gender disparities. The reliance on religious personal laws often subordinates constitutional rights to patriarchal customs. While progressive judicial pronouncements have attempted to correct some of these imbalances, a comprehensive and gender-just legislative framework is urgently needed. Ensuring women's access to fair maintenance is not merely a matter of law—it is a measure of justice, dignity, and equality in a democratic society.

## REFERENCES

- [1] Hindu Marriage Act, 1955
- [2] Muslim Women (Protection of Rights on Divorce) Act, 1986
- [3] Indian Divorce Act, 1869
- [4] Code of Criminal Procedure, 1973 (Section 125)
- [5] Shah Bano v. Union of India, AIR 1985 SC 945
- [6] Danial Latifi v. Union of India, AIR 2001 SC 3958
- [7] Bhuvan Mohan Singh v. Meena, AIR 2015 SC 439
- [8] Agnes, Flavia. *Law and Gender Inequality: The Politics of Women's Rights in India*, OUP, 2010.
- [9] Law Commission of India, Report No. 252: *Women's Access to Justice*, 2015.
- [10] Baxi, Upendra. *The Crisis of the Indian Legal System*, Vikas Publishing, 1982.