
CONTEMPORARY ANALYSIS OF DIVORCE AND MAINTENANCE LAWS IN MODERN INDIA

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1. ABSTRACT

This research article provides a contemporary analysis of the divorce and maintenance laws in India with special focus on the legal problems encountered in divorce litigations filed by husbands. Despite progressive developments in the sphere of Indian family law, the system seems to be unequivocally biased in favor of women when it comes to alimony, maintenance, and issues concerning custody. It draws on aspects of different personal laws, such as Hindu law, Muslim law, and Christian law. The article explores how alimony and maintenance provisions are applied in a manner that is gendered, and points out systemic biases as well as quite frequent misuse of laws like the Dowry Prohibition Act. The article shall make a comparative analysis of the divorce laws of various countries across the globe, like the United States, United Kingdom, and India towards joint custody, de-gendering alimony, and de-emphasis on long-term financial dependency between spouses. It shall be preceded by a critical overview of judicial decisions in, inter alia, *Rajnish v. Neha* and *Kusum Sharma v. Mahinder Kumar Sharma*, to show how the Indian judiciary has been constantly changing their approach with time towards fairness and transparency in settlements in the financial aspect. Such legal reforms are recommended by the study to redress the gender-based inequalities highlighted in the preceding sections. This will involve making joint custody the norm, introducing gender-neutral alimony provisions, equal access to legal aid and mental health services for men, and much greater promotion of alternate mechanisms for resolving disputes, such as mediation. Addressing these issues in the research demands more equality in the family law system today, as it reflects the realities of modern Indian society.

Keywords: divorce laws, alimony, joint custody, gender-neutral, family law, maintenance, legal reforms, India.

2. INTRODUCTION TO DIVORCE AND MAINTENANCE LAWS IN INDIA

Legal framework on divorce and maintenance in India reflects a country with massive cultural, social, and religious diversity. For instance, although the Hindu Marriage Act 1955 formalized Western-style divorce, it pronounced customary divorces valid. Ultimately, these duality gaps within the legal structure have led to a very complex scenario, where issues concerning men at the time of divorce go unnoticed or are not understood

3. CHALLENGES FACED BY MEN DURING DIVORCE

Research indicates that Indian men experience a very tough time during and after a divorce. Charges of emotional and physical harassment, and blackmailing for more dowries are common plays by some women to get an upper hand in the divorce case. The patriarchal nature of Indian society has also led to the notion that the law seems to favour the female counterparts, viewing male participants mainly as the abusers of domestic violence and relationships.

Another issue is the trend of misusing laws such as the Dowry Prohibition Act by women, who often conduct fake cases against husbands or in-laws and then drop them. This proves detrimental to men and works against the credibility of law itself.

4. FOCUS ON ALIMONY AND MAINTENANCE

PURPOSE OF MAINTENANCE AND ALIMONY.

The main principle behind maintaining a spouse is to extend monetary assistance to a spouse who has no different kind of income or property to enable the same standard of living that a pair could afford together, while the marriage was existing. Such provisions are made under the ¹Bharatiya Nagarik Suraksha Sanhita, 2023, Section 144 (formerly under Code of Criminal Procedure, 1973, Section 125); Sections 24 and 25 of the Hindu Marriage Act, 1955, under the specific codes to respective religion-based acts. It can be claimed during the period of pendency of proceedings that periodic or interim maintenance, and it can also be claimed after divorce that permanent alimony is in demand. Factors taken into account by courts providing the above

¹ Indian Family Laws (2024) *Section 144 of BNSS: Order for maintenance of wives, children and parent, Indian Family Laws*. Available at: <https://indianfamilylaws.in/ufaq/section-144-of-bharatiya-nagarik-surakshasanhita-bnss/> (Accessed: 09 October 2024).

two types of maintenance include the length of marriage, the standard of living during the marriage, the financial resources of both spouses, and their respective needs.

HISTORY

Historically, Indian laws on maintenance have always been generous to women, for this factor alone assumed economic vulnerability owing to the patriarchal norms that used to treat a man as the breadwinner and a woman as the homemaker. The idea was to keep them from being destitute and beggary after divorce.

In the contemporary setup where women work and contribute monetarily, men argue that this system results in inequalities because, in most marriages, the man is supposed to look out for long-term financial prospects regardless of the wife's earning potential. It is especially portrayed in towns where women might be earning much like or even more than their husbands. is the case in ²*Kusum Sharma v. Mahinder Kumar Sharma (2015)*, wherein courts have started to require both parties to disclose their financial conditions in detail before a judgment on the amount of maintenance; this follows the principle that financial responsibility has to be divided adequately. Likewise, in *Rajnish v. Neha (2020)*, it is the principle of adequate consideration of the couples' financial conditions that form the basis for determining the amount of maintenance between spouses.

³ALIMONY & MAINTENANCE UNDER VARIOUS LAWS.

ALIMONY UNDER HINDU LAW

The Hindu Marriage Act, 1955 states in section 24 that both the husband and the wife may request maintenance from the other spouse, albeit this will depend on the particulars of each case. Gender doesn't take gender as a relevant factor in the determination of alimony; instead, it takes into account a number of variables and elements, such as each spouse's income and earnings, job status, assets and obligations, and total financial situation.

Normally, in the cases of mutual consent divorce, the alimony rules in India that each party is supposed to pay out are those they have agreed upon. However, in an advised divorce, the matter of alimony is dealt with from case to case. The amount of maintenance is strictly within the discretion of the court.

Recovery of maintenance the wife also has another alternative provided under Section 18(2) of the Hindu Adoptions and Maintenance Act, 1956. Right to get divorce alimony is on grounds given below:-

²“(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,— (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her; (b) 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; (d) if he has any other wife living; (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere; (f) if he has ceased to be a Hindu by conversion to another religion; (g) if there is any other cause justifying her living separately.”

This section should be read along with Section 23 of the same Act, which clarifies that the court has the discretion to grant maintenance and determine the amount to be awarded.

Under the Special Marriage Act 1954, only wife can claim the divorce alimony amount.

ALIMONY UNDER MUSLIM LAW

The parties need to determine under which law they would file for maintenance, i.e. under muslim laws or the criminal law. According to Muslim law, rights to alimony and maintenance are available only for women. This rule will also not get affected even if the wife happens to have a better financial position than the husband.

³The Muslim Women (Protection of Rights on Divorce) Act, 1986 also prescribes the provisions relating to the maintenance/alimony. After the divorce she is entitled to: "A reasonable and fair amount to be paid during the iddat period.

An amount equal to the dowry agreed to be paid during the time of marriage.

² Section 18 in the Hindu adoptions and maintenance act, 1956 Indian Kanoon. Available at: <https://indiankanoon.org/doc/1727980/> (Accessed: 09 October 2024).

³ Majlis, *Majlis*, *Majlis Law*. Available at: <https://majlislaw.com/2024/07/sc-judgment-on-the-muslim-womens-right-to-maintenance-the-battle-in-court-from-1980-to-2024> (Accessed: 09 October 2024).

A title to the property (or properties) given to her either before or after marriage."

If there is no one to pay the amount of maintenance, the magistrate would direct the State Wakf Board to pay the maintenance amount.

Under the Muslim Law, a divorced wife may seek alimony if:— "She did not remarry and cannot support herself after iddat.

She has children and cannot support them."

If there is no one to pay the amount of maintenance, the magistrate would direct the State Wakf Board to pay the maintenance amount.

ALIMONY UNDER CHRISTIAN LAW

The separated wife maintenance comes under Sections 36, 37 & 38 of the Indian Divorce Act, 1869. Alimony and maintenance are dealt with under section 36. The intention behind this Section is that it gives the wife some source of living while the case is still at an interim stage. Permanent alimony is dealt under section 37. The court may exercise its discretion for the determination of the amount. If in the future, the husband is unable to make any such payment, the court may also temporarily discharge or suspend the order. Below are some factors taken into account under Section 37:-

“Conduct of parties before and after marriage.

Nature and source of husband's income.

Wife's own wealth, if any."

Section 38 governs and ensures the payment of alimony.

TYPES OF ALIMONY

PERMANENT ALIMONY: After the divorce is finalized, this type of alimony is given to the spouse who needs continuous financial support. Usually, the payment is paid for an infinite amount of time, and it stops if the beneficiary spouse gets married again or dies.

TEMPORARY ALIMONY: Also referred to as pendente lite alimony, is awarded to the spouse who needs it to support themselves financially while the divorce is finalized.

REHABILITATIVE ALIMONY: This kind of alimony is given for a set amount of time to support the spouse who might need to enroll in training, pursue further education, or engage in other initiatives in order to become financially independent and self-sufficient.

LUMP-SUM ALIMONY: Unlike continuous payments, this kind of alimony is given to the receiving spouse all at once. The recipient spouse frequently uses this money to assist pay off debts or buy a new house.

⁴HOW IS ALIMONY CALCULATED?

There is no absolute rule for calculation of alimony. The alimony may be paid in full upfront or in installments

If it is paid monthly, at least 25% of the net income, the Supreme Court of India has decreed that the husband's pocket should meet. There is no such benchmark as far as one-time settlement is concerned, but the amount usually falls between 1/5th and 1/3rd of the husband's net worth. In recent times the Honourable Supreme Court has laid down certain guidelines for determination of alimony as per the *Rajnish v Neha* case.

However, while computing the alimony amount, there are some factors that are considered by the court. These may be different and could include the following:

i) Husband's and wife's incomes and other properties, if any ii) Conduct of both the husband and the wife iii) Mandatory deductions such as income tax, EMIs, loan repayments etc. Are considered to calculate the net income of the husband iv) Liabilities of the husband, such as dependent parents v) Social status and way of living of both concerned vi) Age and physical condition of both parties vii) Duration for which the couple was married viii) Cost of education and bringing up of the child/children

5. TRACING THE LEGAL POSITION OF MAINTENANCE THROUGH JUDICIAL

⁴ Birla Websie

PRONOUNCEMENTS**i) ⁵MAMTA JAISWAL VS. RAJESH JAISWAL, MADHYA PRADESH HIGH COURT CIVIL REVISION NO.1290 OF 1999 DECIDED ON 24.03.2000.**

The Madhya Pradesh High Court has ruled in this instance that well-qualified spouses who would prefer to do nothing but sit about and not look for a way to support themselves should be discouraged. In addition, it is decided that a woman who is contesting for a divorce cannot wait to hold her husband accountable for failing to provide pendente lite alimony during the divorce proceedings.. In this particular case, the Madhya Pradesh High Court had decided that capable wives m discourage wellqualified spouses who would rather do nothing but lounge around and not hunt for a method to support themselves.

ii) ⁶OMAR ABDULLAH VS. PAYAL ABDULLAH & ORS. 2018 (1) JCC 632.

The Delhi High Court has ordered the trial court to determine whether the wife's petition under section 125 Cr.P.C. can be maintained first. The Court determined that the issue of interim maintenance award and the petition's maintainability under section 125 Cr.P.C. are linked. Before awarding interim maintenance, the court in question must determine if the woman was unable to support herself and whether her husband neglected or refused to provide for her. Only then may the matter be further pursued.

iii) ⁷BHUSHAN KUMAR MEEN VS. MANSI MEEN SLP (CRL) 7924 OF 2008 SUPREME COURT

The Supreme Court noted that "we cannot also shut our eyes to the fact that at present the respondent wife is not employed or, at least there is nothing on record to indicate that she is employed in any gainful work" in this case, even though the lower court had reduced the maintenance amount from Rs. 10,000 to Rs. 5,000. Still, there's no reason she shouldn't be able to support herself going forward, especially considering her qualifications.

⁵ II(2000)DMC170

⁶ OMAR ABDULLAH VS. PAYAL ABDULLAH & ORS. 2018 (1) JCC 632.

⁷ SLP(CrL.)No.7924 of 2008

iv) ⁸SHAH BANO BEGUM VS. MOHD. AHMAD KHAN (AIR 1985 SC 945)

The Supreme Court held that Section 125 of Cr.Pc is a secular provision and is applicable to all women irrespective of their religion. The husband will have to pay maintenance to his wife till the time she remarries.

6. COMPARATIVE ANALYSIS OF DIVORCE LAWS.**INDIA**

Divorce and Alimony: Under the Hindu Marriage Act, 1955, common grounds include cruelty, adultery, desertion, and mutual consent. For Muslims, divorce can be obtained through Talaq or through courts under the Dissolution of Muslim Marriages Act, 1939. Christians follow the Indian Divorce Act, 1869, with grounds such as adultery and conversion. Maintenance is awarded under Section 144 of the Bharatiya Nagarik Suraksha Sanhita (Section 125 of the Code of Criminal Procedure) and the Hindu Marriage Act. The courts frequently refer to the husband's capacity to raise finances and the wife's needs. This tendency recently tends to weaken the lines of gender neutrality, because the courts consider both spouses' financial situation.

Child Custody: In cases involving very young children, custody is more likely to go to the mother; however, joint custody is increasingly on the rise. The "best interests of the child" is the guiding principle under which these decisions are made.

UNITED KINGDOM

Divorce and Alimony: The British government brought in no-fault divorce under The Divorce, Dissolution and Separation Act 2020. Here couples can raise the grounds of an irretrievable breakdown of marriage without assigning any blame. Seeking maintenance is based on needs, lifestyle and financial capacity. Courts strive for "clean break" settlements which entail long-term minimal dependence on each other from ex-spouses.

Child Custody: ⁹The UK encourages joint custody wherever possible and is based on "best

⁸ AIR 1985 SC 945

⁹ *Shared custody is becoming the norm in America* (2014) *ScienceDaily*. Available at: <https://www.sciencedaily.com/releases/2014/05/140521133710.htm> (Accessed: 09 October 2024).

interests of the child." Courts have abandoned stereotypical notions of gender.

UNITED STATES OF AMERICA

Divorce and Alimony: Most States Provide Both No-Fault (Irreconcilable Differences) And Fault-Based Divorces (Adultery, Cruelty). California and New York are leading the way with nofault divorces without work. Length of marriage and earnings capacity are other factors that vary from state to state and often take into consideration rehabilitative and temporary spousal support. Many states are conservative, like Texas, whereas others, such as California, award generous spousal support based on length of marriage and earnings capacity.

Child Custody: US courts have generally adopted the "best interests of the child" standard. Joint custody is very commonly awarded, but every state implements the approach in different ways; some focus on an equally shared time arrangement.

7. REFORMS PROPOSED

- **JOINT CUSTODY RIGHTS:**

The current system often awards child custody to mothers, particularly when the children are young. Reform proposals include implementing joint custody as default where both parents will have equal rights and responsibilities concerning the child's upbringing.

Legislations in countries such as the United States and United Kingdom favor joint custody unless held to be injurious to the child, which is likely to happen in the Indian case also. A solution such that it is balanced between the best interests of the child and equal rights between parents may help reduce emotional pain for fathers who are victims of divorce courts.

- **REFORM OF ALIMONY AND MAINTENANCE:**

Spousal Maintenance, which seems more towards women than men is possible under the umbrella of the Hindu Marriage Act and Section 125 of the CrPC. Reform calls also emanate from making such provisions more gender-neutral in character wherein not just the position of both parties be considered for awarding spousal maintenance but also so that a spouse who possesses a state of economic sufficiency is not unfairly awarded with spousal maintenance. India might also adopt alimony reform models such as the one that has been done in Germany,

which limits the period of payment of alimony or the system accepted in Australia, focusing on making both parties independent after divorce.

- **JUDICIAL AID AND COUNSELING:**

These include inability to access support groups or counseling. Reforms should encompass establishing legal aid and mental health support services specifically for men, and particularly those suffering from the stigma associated with accusations of domestic violence and other bitter custody battles.

- **MEDIATION AND ALTERNATE DISPUTE RESOLUTION:**

¹⁰In family disputes, mediation is particularly helpful because emotions are involved in addition to the law and facts. The nature and content of mediation in a marital dispute situation differ greatly from that of commercial and property disputes. Due to the presence of certain factors that aren't present in other types of conflicts, marital disputes are unique and unlike any other kind of dispute. These aspects embrace and constitute motivation, sentiments, social compulsions, personal liabilities and obligations of the parties, the views of both the parties relating to life generally and to the establishment of wedding specially, the safety for the long run life, thus on then forth.

¹⁰ Mediation: In Divorce & Other Family Matters Lovely Singh & Anku Anand School of Law, KIIT University, Bhubaneswar. Odisha, India 2018 IJLMH I Volume 1, Issue 5 | ISSN: 2581-5369