
CHANGING SCENARIOS OF ECONOMIC INTEREST OF THE SPOUSES IN INDIA

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ABSTRACT

This article examines changing scenarios of economic interest of the spouses in India to address lack of uniformity in maintenance laws and provisions on Marital/Spousal Property. In the present twenty-first century woman's contribute equally in the acquisition 'family assets'. The assets acquired by the spouses during the marriage are known as the marital/spousal property. Our statutes lack the provision on the same. Through this article author has attempted to highlight the existing problems in the system and need for new laws on Marital/Spousal Property and has mentioned some important steps taken by our legislatures in the direction.

1. DEVELOPMENT UNDER INDIAN LAW

In India maintenance for a divorced wife, primarily under Hindu law, was governed solely by uncodified personal laws, with no general statutory right and extremely limited remedies.¹ Before 1898 the classical Hindu law treated marriage as indissoluble, wherein divorce was a rare phenomenon and occurred only in customary systems like Marumakkathayam² or among lower castes, leaving no post-divorce maintenance framework. Wife's right to lifelong maintenance then known as bhiksha which included only food and clothing ended with marital dissolution.³ She had to return to her parents home or depend on her stridhan (personal property), sons or charity.⁴ Courts also enforced husband's duty only during subsistence of marriage that to via civil suits. Post-divorce, claims were unenforceable and as per texts like Manusmriti and yajnavalkya smriti husband's obligation to maintain her wife lasted only when they were still married, husband's duty ceased after the marriage.⁵

Before 1898 under Muslim Law a divorced wife was entitled to maintenance only during iddat period, that was three months after divorce. After iddat period wife had no ongoing right unless she was pregnant. She had to rely on her mehr (dower) or on her family.⁶

Enforcement Mechanisms included civil suits for restitution of conjugal rights or specific performance, but not post-divorce alimony or maintenance. There were caste panchayats or community customs which dictated only an ad hoc relief and were often discriminatory against women. There was no uniform criminal remedy and destitution of women led to vagrancy without legal aid.⁷

On 22nd March 1898 The Code of Criminal Procedure Act, 1898 (Act no. V of 1898) was enacted by the Governor-General of India in council under British Colonial rule.⁸ Section 488 of the said Act was pivotal in providing summary relief to the neglected wives and

¹Blog.ipleaders.in last visited on 17 February 2026.

² Divorce in Marumakkathaya system was known as vivahavasamhara. It allowed a very strait forward dissolution of marriage. Women would initiate divorce by simply removing pudava, sari given at marriage, and returning to her tharavadu (ancestral home) which signaled the dissolution of marriage without a formal decree of divorce, also, marriages were non-sacramental unions, and their dissolution did not affect tharavadu property, which stayed maternal. No alimony or maintenance claims arose as spouse retained ties to the maternal families and children also belonged to the mother's line.

³ *Supra* note 1.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Latestlaxw.com last visited on 19 February 2026.

children. Under the said section any divorced wife (Hindu or otherwise) could claim maintenance if unable to maintain herself, up to ₹500/month, provided she wasn't living in adultery.⁹ This was the primary recourse and was applicable regardless of religion.¹⁰ Localized acts like Bombay Hindu Divorce Act, 1947 was enacted but it allowed only limited divorce and tied maintenance to judicial discretion during proceedings.¹¹ Thus, before 1955, divorced wives had no other option but to rely on family, stridhan, or CrPC Section 488 as a safety net.

In modern India there are two types of statutory provision, which provide for the maintenance of a divorced wife. One is under the respective matrimonial statutes¹² obtaining to various communities in India and other is section 144 of Bharatiya Nagarik Suraksha Sanhita, earlier the similar provision was provided for under section 125 of Code of Criminal Procedure, which is of a general nature and obtains to ail the communities in India except Muslim divorced wives who are now governed by Muslim Women (protection of Rights on Divorce) Act, 1986. Thus there is a difference of opinion as to the manner and method of assessing maintenance under the various Acts. Every statute in India provides a different criterion for determining the quantum of maintenance. Even the judicial pronouncements are not uniform. A woman following Muslim faith may get lesser than what a women following Christian or a Hindu faith may get. The Indian Divorce Act, 1869 contains some provisions for settlement of property on the grounds similar to then English Law. Parsi Marriage and Divorce Act, 1936 also contains similar provisions. The Hindu Marriage Act, 1955 deals with law relating to maintenance, where in both the spouses can seek maintenance, the Act also has a provision which deals with the settlement of joint property of the spouses. The Hindu Adoption and Maintenance Act, 1956 deals with maintenance to wife. There are no provisions for settlement of property of spouses in Special Marriage Act, 1954. Maintenance under Muslim law is majorly governed by their personal law. Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 deals with maintenance, earlier the provision was covered by section 125 of Code of Criminal Procedure.

⁹ Maintenance rights of the divorced Indian Women, Myadvo.in last visited on 19 February 2026.

¹⁰ Ibid.

¹¹ Ibid.

¹² See for instance, Hindu Marriage Act, 1955; Special Marriage Act 1954; Parsi Marriage and Divorce Act, 1936 and Indian Divorce Act, 1869. There is no provision for maintenance of a Muslim wife under the Dissolution of Muslim Marriage Act, 1939.

1.1 INDIAN DIVORCE ACT, 1869

The Indian Divorce Act, 1869, based on then English law, governs divorce, judicial separation, nullity and related reliefs for the Christians, excluding native converts, in India. The Act also has some provisions for settlement of spousal property and financial adjustments of Christian. With jurisdiction primarily in high courts the Act was enacted by the Governor general in council during British rule and applies to marriages solemnised before or after 1869. Dissolution of marriage is discussed in sections 10 to section 17, these sections deal with fault grounds of divorce. Section 18 to section 21 talks about void and voidable marriages and the grounds on which a marriage can be declared void or voidable. Sections 22 to section 26 talk about judicial separation and section 32 contains provisions for restitution of conjugal rights. Section 36 contain provisions for *pendente lite* maintenance¹³, provisions for permanent alimony are discussed under section 37.¹⁴ Section 40 of the Act talks about existence of any pre- nuptial and post- nuptial agreements and is discussed hereunder table 1.1:

TABLE No. 1.1:

Section	Explanation
Section 40	After passing of the decree of divorce or nullity of marriage, the court may inquire into the existence of any post-nuptial settlement between the parties and may make such orders, for whole or any portion of the property settled whether for the

¹³ Section 36, Indian Divorce Act 1869. Alimony *pendente lite*- In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection the wife may present a petition for expenses of the proceedings and alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of the expenses of the proceedings and alimony pending the suit alimony pending the suit as it may deem just:

Provided further that the petition for the expenses of the proceedings and alimony pending the suit, shall, as far as possible, be disposed of within sixty days of service of such petition on the husband.

¹⁴ Section 37 Power to order permanent alimony- Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall to the satisfaction of the court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments- In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable: Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part as to the court seems fit.

	<p>benefit of the wife or husband or children or both children and parents, as the court deems fit.</p> <p>Provided that the court shall not make any order for the benefit of the parents at the expense of the children.¹⁵</p>
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1.2 PARSİ MARRIAGE AND DIVORCE ACT, 1936

The Parsi Marriage and Divorce Act, 1936 is a personal law enacted for the Parsis (Zoroastrians) by the British Indian Imperial legislative council to govern marriage, divorce and matters related there to. It repealed the earlier 1865 Act and was last amended significantly in 1988 to address discriminatory provisions applying across India except Jammu and Kashmir.¹⁶ Section 3 to section 17 of the Act lays down provisions as to requisites of a valid marriage, both the parties to the marriage must be Parsis and the marriage has to be solemnised by a priest (mobed) in the presence of minimum two witnesses, for the validity of the marriage it is essential that parties must marry each other with free consent and the bride must be at least 18 years and bride-groom must be at least 21 years of age. All the impediments of consanguinity and affinity apply.¹⁷

A valid marriage must be registered.¹⁸ Divorce or judicial separation can be sought on grounds like adultery, cruelty, desertion for two years, unsound mind, non-consummation within one

¹⁵ Section 40, Indian Divorce Act, 1869.

¹⁶ Parsi Marriage and Divorce, lawnotes.co last visited on 19 February 2026.

¹⁷Section 3 Requisites to validity of Parsi marriages-

(1) No marriage shall be valid if—

(a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule I; or

(b) such marriage is not solemnized according to the Parsi form of ceremony called “Ashirvad” by a priest in the presence of two Parsi witnesses other than such priest; or

(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.

(2) Notwithstanding that a marriage is invalid under any of the provisions of sub-section (1), any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate

¹⁸ Certificate and registry of marriage.—Every marriage contracted under this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in Schedule II. The certificate shall be signed by the said priest, the contracting parties and two witnesses present at the marriage and the said priest shall thereupon send such certificate together with a fee of two rupees to be paid by the husband to the Registrar of the place at which such marriage is solemnized. The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose and shall be entitled to retain the fee.

year due to willful refusal, or conversion to another religion¹⁹, mutual consent is also allowed.²⁰ Special Parsi Matrimonial Courts handle suits, with provisions for nullity if impotence or fraud prevents consummation. Provisions as to pendente lite maintenance and permanent

¹⁹ Section 32 Grounds for divorce- Any married person may sue for divorce on any one or more of the following grounds, namely:

(a) that the marriage has not been consummated within one year after its solemnization owing to the wilful refusal of the defendant to consummate it;

(b) that the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit: Provided that divorce shall not be granted on this ground, unless the plaintiff (1) was ignorant of the fact at the time of the marriage, and (2) has filed the suit within three years from the date of the marriage;

(bb) that the defendant has been incurably of unsound mind for a period of two years or upwards immediately preceding the filing of the suit or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the plaintiff cannot reasonably be expected to live with the defendant. Explanation- In this clause-

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the defendant, and whether or not it requires or is susceptible to medical treatment;

(c) that the defendant was at the time of marriage pregnant by some person other than the plaintiff:

Provided that divorce shall not be granted on this ground, unless (1) the plaintiff was at the time of the marriage ignorant of the fact alleged, (2) the suit has been filed within two years of the date of marriage, and (3) marital intercourse has not taken place after the plaintiff came to know of the fact;

(d) that the defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence: Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact; (dd) that the defendant has since the solemnization of the marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the defendant: Provided that in every suit for divorce on this ground it shall be in the discretion of the Court whether it should grant a decree for divorce or for judicial separation only;

(e) that the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution:

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years (i) after the infliction of the grievous hurt, or (ii) after the plaintiff came to know of the infection, or (iii) after the last act of compulsory prostitution;

(f) that the defendant is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860):

Provided that divorce shall not be granted on this ground, unless the defendant has prior to the filing of the suit undergone at least one year’s imprisonment out of the said period;

(g) that the defendant has deserted the plaintiff for at least 2[two years];

(h) that an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff, and the parties have not had marital intercourse for 4[one year] or more since such decree or order;

(j) that the defendant has ceased to be a Parsi 6[by conversion to another religion]:

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact.

²⁰ Section 32B Divorce by mutual consent- (1) Subject to the provisions of this Act, a suit for divorce may be filed by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1988 (5 of 1988), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved: Provided that no suit under this sub-section shall be filed unless at the date of the filing of the suit one year has lapsed since the date of the marriage. (2) The Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

maintenance and alimony are provided in section 39²¹ and section 40.²² Act also contains specific provisions for disposal of joint property and Settlement of wife's property for benefit of children. Both these provisions are discussed hereunder:

TABLE No. 1.2:

Section	Explanation
Section 42	In the final decree the court may make such provision, with respect to property presented at or about the time of marriage which may belong jointly to both the spouses, as it deems fit. ²³
Section 50	In any case in which the court shall pass a decree of divorce or judicial separation for adultery of the wife, if it appears to the court that the wife is entitled to any property either in possession or reversion, the court may order such settlement as it shall think reasonable to be made of any part of such property, not exceeding one half thereof, for the benefit of the children or any of them. ²⁴

²¹ Alimony pendente lite.—Where in any suit under this Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the suit, it may, on the application of the wife or the husband, 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, it may seem to the Court to be reasonable: Provided that the application for the payment of the expenses of the suit and such weekly or monthly sum during the suit, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.

²² Permanent alimony and maintenance- (1) 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 for the purpose by either 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 having regard to the defendant's own income and other property, if any, the income and other property of the plaintiff, the conduct of the parties and other 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.

(2) The Court if it is satisfied that there is change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) The Court if it is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, vary, modify or rescind any such order in such manner as the Court may deem just.

²³ Section 42 Disposal of joint property- In any suit under this Act the Court may make such provisions in the final decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

²⁴ Settlement of wife's property for benefit of children- In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of any part of such property, not exceeding one half thereof, for the benefit of the children of the marriage or any of them.

In *Banoo Jal Daruwala v. Jal C. Daruwala*²⁵ it was held that sec 42 is limited to the joint properties presented to the parties at or about the time of marriage and does not relate to their separate properties.

1.3 HINDU LAW

1.3.1 HINDU MARRIAGE ACT, 1955:

Section 24 of Hindu Marriage Act deals with interim maintenance or maintenance *pendent lite* wherein a claim can be made by either spouse for his or her personal maintenance and for the expenses of the proceedings under the Act. The court can make an order wherein the respondent has to pay claimant such sum as the court deems reasonable having regard to the petitioner's own income and the income of the respondent, the only requirement is that the claimant establishes that he or she has no independent income sufficient for his or her maintenance and to meet the expenses of the proceedings. The application under section 24 should be disposed of within 60 days from the date of service of notice to the respondent.²⁶

Under section 25 of Hindu Marriage Act either spouse can seek maintenance from his/her significant other. The right to maintenance is a statutory right and the parties cannot make a contract to excuse himself/herself out of it. The court may pass an order for permanent alimony and maintenance at the time of passing any decree granting the petition or at any subsequent time. Thus the court has the power to award maintenance even if the petition is dismissed because in either case (when petition is allowed or dismissed) it is a decree. Also decree includes a decree of nullity passed in case of a void or a voidable marriage. The court may order payment in form a gross sum, a monthly payment or a periodical payment. The payment shall not exceed the life of the appellant and should be in regard to the income and property of both respondent and appellant, the conduct of both the parties and court should also consider if the respondent has other dependents like father, mother, brother, sister etc. If a change in

²⁵ *Banoo Jal Daruwala v. Jal C. Daruwala* AIR 1964 Bom 126.

²⁶ Section 24, Hindu Marriage Act, 1955, Maintenance pendente lite and expenses of proceedings: Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.

circumstances is shown, the court also has the power to vary, modify or discharge the party from paying maintenance either prospectively or retrospectively. The court also has the power to rescind the order if the party in whose favour the order is made has remarried or if she is the wife has not remained chaste, and if such party is husband has committed adultery. In case of the parties resume cohabitation in cases of restitution of conjugal rights or judicial separation the order of maintenance is nullified and in case of death of the person paying maintenance the order comes to an end.²⁷

The interest of a Hindu women in the property is not effected by her marriage, she is entitled to own property independently. The Hindu Marriage Act, 1955, was passed by the Parliament. The Act recognizes divorce, but may be the legislature did not think that facet of marital property could be problematic as well, and hence, a simple provision in the form of section 27 was enacted which provides for distribution of property presented to the husband and wife “at or about the time of marriage” and which may “belong to them jointly”.²⁸

The reason for confining the concept of spousal property to the property given “at or about the time of marriage”, was twofold. Firstly, in that 1950s the women in India were hardly engaged in any profitable employment. Educating the daughters at that time was more of a luxury, or was considered an addition in the dowry.²⁹ The wife did not directly contribute in the family pool. Therefore, the question of division of ‘family assets’ acquired during marriage did not arise on divorce. Her contribution towards the welfare of the family and rearing of children was reimbursed by awarding her maintenance. Secondly, the Hindu Marriage Act, 1955 was

²⁷ Section 25, Hindu Marriage Act, 1955, Permanent alimony and maintenance: (1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant 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 applicant as, having regard to the respondent’s own income and other property, if any, the income and other property of the applicant the conduct of the parties and other 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 immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.

²⁸ Section 27, Hindu Marriage Act, 1955, Disposal of property: In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

²⁹ Rama Mehta, *Divorced Hindu Women*, 9 (1975).

sculpted on the basis of contemporary English Matrimonial Causes Act, 1950, which itself was desirous of the concept of spousal property.

Section 27 empowers the court to make suitable provisions, for distribution of the property presented to the parties at or about the time of marriage, in the decree which it may pass in the proceedings under the Act. Since the relief is ancillary to the main proceedings no order can be passed under section 27 if the relief in the main proceedings is denied.³⁰

The words “the Court may make such provisions in the decree”, in the section do not automatically imply that the court will not entertain any application under section 27 after the decree in the main petition has been passed.³¹ It was held that even after the disposal of the main proceedings the court does not lose its jurisdiction for the allocation of property which falls under the domain of section 27. Even under English law the court was empowered to make provision for periodical payments to the wife “on any decree”, of divorce or nullity. However, all along the English Courts held that the word “on” was not confined to the time of making the decree absolute but might mean even “shortly after”.³² Therefore, we can say that the words “in any decree” in section 27 of the Hindu Marriage Act, 1955 do not confine the jurisdiction of the court to the time of passing the decree in the main petition. Thus even after the main proceeding is terminated the court would still have Jurisdiction to entertain an application under section 27.

The words “at or about the time of marriage” are imperative. The word ‘at’ give the impression of the actual time of marriage and the words “about the time of marriage” mean either prior to or after the marriage, i.e., it must be around the time of marriage. Accordingly, presents given after the marriage are not strictly covered by section 27. However, the word “about” is substantial, it gives a room to the court where the circumstances of the case permit.

High Courts vary in their interpretation of the term “belong jointly to both the husband and the wife”. The Karnataka High Court³³, while interpreting the word ‘jointly’, reached the conclusion that the property must have been presented jointly to both the parties. Consequently, a present of rupees two thousand to the husband at the time of marriage was said to have been "paid to the husband alone by way of ‘Vara Dakshina’ and not jointly to husband and wife.

³⁰ *Ibid.*

³¹ *Bijoy Krishna Ghosal v. Namita Ghosal nee Ganguly*, AIR 1991 Cal 34.

³² Raydon, *Rayden on Divorce*, 718 (8th ed., 1960).

³³ *M.D. Krishna v. M.C. Padma*, AIR 1968 Mys 226.

Therefore, the claim of the wife for this amount failed. The Allahabad High Court³⁴ on the other hand invoked the inherent powers under section 151 of the Code of Civil Procedure³⁵. According to A. K. Kirty, J., “section 27 does not exclude the power of the court to pass an appropriate decree in regard to property which may belong solely to the husband and solely to the wife.”³⁶

However, the Allahabad High Court’s view that the court can invoke inherent powers to decide a matter under section 27 was not followed by other High Courts.³⁷ The reason was that the words ‘belonging jointly’ were taken to mean ‘owning Jointly’. Sultan Singh, J.,³⁸ of the Delhi High Court observed, “under Section 27 of the Act power is conferred upon the court to make orders for the disposal of the properties which were Jointly owned by both the husband and the wife. The section does not make any reference to the properties belonging exclusively to either the husband or the wife. It must therefore be held that there is no provision conferring any power on the court under the Act to pass any order with respect to property owned by one of the parties.”

M. M. Punchhi, J., of the Punjab and Haryana High Court explained the words ‘belonging jointly’ by in *Surinder Kumar v. Madan Gopal Singh*³⁹. According to him the word ‘belong’ does not, necessarily reflect title to the property in the sense of ownership, but, denotes the “joint use in their day to day living”, whether the property was received "individually or collectively". Hence, the entire prominence is on the nature of property and not on the fact that to whom it was presented.

From the above discussion we can conclude that the majority of courts have interpreted ‘jointly’ in section 27 in terms of ‘ownership’. The word ‘belong’ does not necessarily mean ‘title’ to the property in the sense of ownership. It implies the connection of the person with property in his/her possession. Thus we can say that as per section 27, if some jewellery is presented to the wife, either by her own parents or parents of her husband, it will belong to

³⁴ *Kamta Prasad v. Om Wati*, AIR 1972 All 153.

³⁵ Section 151 Code of Civil Procedure: Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

³⁶ *Kamta Prasad v. Om Wati*, AIR 1972 All 154.

³⁷ *Surinder Kaur v. Madan Gopal*, 1980 HLR 507 (P&H); *Shukla v. Brij Bhushan Makkar*, AIR 1982 Del 223; *Surya kant v. Jashumati*, (1981) 1 HLR 473.

³⁸ *Shukla v. Brij Bhushan Makkar*, AIR 1982 Del 223.

³⁹ *Surinder Kumar v. Madan Gopal Singh*, 1980 HLR 507.

both of them, irrespective of the fact that only wife used it. Likewise, a suit or gold ring presented to the husband by the parents of his wife, belongs to both of them. Hence following this connotation, we can say that properties which are meant for the separate use of the husband or the wife are not 'his' or 'her' belongings, but 'their' belongings.

The motive of the parliamentarians in enacting section 27 was, in case a marriage breaks down, the interest of the spouses (particularly wife) is protected and it also save spouses from approaching a different court for settling property disputes which are basically integral part of the matrimonial conflict itself.

1.3.2 HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

Under HAMA husband is under the obligation to maintain his wife during his lifetime.⁴⁰ As per section 18(1) of Hindu Adoptions and Maintenance Act, 1956 a Hindu wife living with her husband is entitled to maintenance. A Hindu wife living separately from her husband can claim maintenance if the husband is found guilty of desertion or willful neglect, has treated her with cruelty, he is suffering from leprosy, has another wife living (it is immaterial if she consented to the second marriage of husband), keeps a concubine in the same house the wife is living or resides with the concubine elsewhere or if he has ceased to be a Hindu by converting into another religion.⁴¹ A Hindu wife forfeits her claim to maintenance if she is unchaste or she ceases to be a Hindu by converting into another religion.⁴² Thus under section 18 of Hindu Adoptions and Maintenance Act a wife living separately from her husband without any reasonable excuse is not entitled to maintenance. Also mere resumption of cohabitation does not negate the maintenance order passed under section 18(2) of the Act.

⁴⁰ Section 18(1) Hindu Adoptions and Maintenance Act, 1956, (1) "Subject to the provisions of this Section, a Hindu wife whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime".

⁴¹ Section 18(2) Hindu Adoptions and Maintenance Act, 1956, 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 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; (c) if he has any other wife living; (d) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere; (e) if he has ceased to be a Hindu by conversion to another religion; (f) if there is any other cause justifying living separately.

⁴² Section 18(3) Hindu Adoptions and Maintenance Act, 1956. A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

Hindu Adoptions and Maintenance Act have a unique provision wherein the widowed daughter-in-law is provided maintenance by her father-in-law from the coparcenary property in his possession out of which daughter-in-law has not obtained any share. Father-in-law's obligation arises only when the widowed daughter-in-law has no means of her own earnings or other property or estate of her husband/father/mother or from her son or daughter or his or her estate.⁴³

1.3.3 HINDU SUCCESSION ACT, 1956

Under the Hindu Succession (Amendment) Act, 2005, daughters are entitled to the same share in ancestral property as sons and they hold coparcenary rights by birth in the joint Hindu family.⁴⁴ This right cannot be denied merely because she is married, as confirmed by Section 6 of the said Act and numerous Supreme Court rulings.⁴⁵ Section 6 (1)⁴⁶ states that a daughter becomes a coparcener in her own right and in the same manner just like a son, with equal rights to partition and inheritance.⁴⁷ She would also bear the same liabilities as that of a son and any reference to the Hindu coparcenary would include a daughter as a coparcener. Now daughters acquire interest in ancestral property at birth, not just by inheritance, thus enabling them to make claims via survivorship or partition. At family partition, daughters get identical shares as sons, including from pre-deceased siblings. Daughters also share obligations like family debts attached to coparcenary property. Section 6(3) ensures her share devolves equally, unaffected

⁴³ Section 19 Hindu Adoptions and Maintenance Act, 1956. Maintenance of widowed daughter-in-law.

(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law: Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance (a) from the estate of her husband or her father or mother, or (b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the re-marriage of the daughter-in-law.

⁴⁴ What Daughters and widows are Entitled to Under Hindu Law, iwills.in last visited on 21 February 2026.

⁴⁵ Coparcenary Rights of Women under Hindu law, drishtijudiciary.com last visited on 21 February 2026.

⁴⁶ Devolution of interest in coparcenary property- (1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, (a) by birth become a coparcener in her own right the same manner as the son; (b) have the same rights in the coparcenary property as she would have had if she had been a son; (c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener: Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

⁴⁷ Supra at 136.

by marital status.⁴⁸ Married daughters retain coparcenary status in their father's family property post-marriage.⁴⁹ In *Vineeta Sharma v. Rakesh Sharma*⁵⁰ the Court ruled daughters born before or after 2005 have equal coparcenary rights, irrespective of marriage.⁵¹ This applies retrospectively, reinforcing gender equality in ancestral property.

1.4 MUSLIM LAW

A Muslim woman is entitled to receive *nafkah*, which includes food, clothing and shelter from her husband during the subsistence of marriage. A Muslim husband is bound to maintain his wife of a valid marriage, it is immaterial whether the wife is rich or poor, Muslim or non-Muslim or even if husband is without any means. Wife's right to maintenance is a debt against husband and it is an independent right. But the husband's duty maintain his wife exists only if she remains faithful and obeys all his reasonable demands. The husband's duty to maintain his wife commences only when she attains puberty or completes the age of 15 years and not before that. The wife can also claim future maintenance on account of pre or anti-nuptial agreement wherein she is granted maintenance in case of ill-treatment, she is also intitled to a special allowance like, *kharch-i-pandan*. *Guzara*, *meva-khori* under such agreement. A wife can also claim arrears of maintenance from her husband. A Muslim woman's right to maintenance is governed by various sources, including:

1. The Quran: The Quran is the primary source of Muslim Law and it provides for husband's obligation to maintain his wife.
2. Hadith: Hadith contains the sayings and actions of the Prophet Muhammad himself. Hadith provides guidance on a husband's obligation to maintain his wife.

⁴⁸ Section 6 (3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005 (39 of 2005), his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,—

(a) the daughter is allotted the same share as is allotted to a son; (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

⁴⁹ *Supra* note 45.

⁵⁰ *Vineeta Sharma v. Rakesh Sharma* (2020) 9 SCC 1.

⁵¹ *Supra* note 45.

3. The Muslim Women (Protection of Rights on Divorce) Act, 1986: As per the Act a Muslim husband is obligated to maintain his wife, including providing her with food, clothing and shelter⁵². Act also includes a provision wherein husband is obligated to maintain his wife during Iddat period (three months after divorce). Under the Act a Muslim Women is entitled to receive maintenance from her husband for a reasonable period after divorce, which shall not exceed iddat period and the husband has to provide maintenance in accordance with his means and the needs of the wife and the standard of living to which the wife is accustomed.⁵³ The husband also has to pay the sum of *mahr* or dower agreed to be paid to her at the time of marriage or at any time thereafter and all the properties given to her before or at the time of marriage.⁵⁴ The supreme court has further held that the Muslim husband;s liability to maintain his wife is not confined

⁵² Section 3, The Muslim Women (Protection of Rights on Marriage) Act, 1986, Mahr or other properties of Muslim woman to be given to her at the time of divorce:

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of mahr or dower due has not been made or paid or the properties referred to in clause (d) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, mahr or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her,

make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as it and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or mahr or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974), and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

⁵³ Prof (dr) Khushal Vibhute and Filipos Aynalem, *Legal Research Methods (teaching material)*, 71 (2009).

⁵⁴ *Ibid.*

to iddat period, a fair and reasonable provision exceeding beyond iddat period must be made by the husband during the iddat period.⁵⁵

4. The Muslim Women (Protection of Rights on Marriage) Act, 2019: the Act makes triple talaq a cognizable and a punishable offence⁵⁶ and declares that any talaq pronounced by a Muslim husband to his wife, by words, either spoken or written or by visible representation or by any other manner whatsoever, shall be void and illegal.⁵⁷ The Act also provides that a Muslim women shall be entitled to receive maintenance from her husband, including a lump sum payment, monthly instalments or a combination of both.⁵⁸

1.5 PROVISION UNDER CODE OF CRIMINAL PROCEDURE, 1973

Chapter IX, section 125 of Code of Criminal Procedure, 1973 (Cr.P.C.) provides that if any person having sufficient means neglects and refuses to maintain his wife, unable to maintain herself, a Magistrate of first class may upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife. Provided that if such person offers to maintain his wife on the condition of her living with him and she refuses to live with him, the magistrate may consider the reasons stated by her and on being satisfied that there are reasonable grounds for doing so order the husband to pay maintenance to wife notwithstanding such offer. Wife includes a women who has been divorced by her husband or who has obtained divorced from her husband and has not remarried.⁵⁹ If the husband has contracted second

⁵⁵ *Danial Latifi & others v. Union of India*, (2001)7 SCC 740.

⁵⁶ Section 4, The Muslim Women (Protection of Rights on Marriage) Act, 2019, Punishment for pronouncing talaq: Any Muslim husband who pronounces talaq referred to in section 3 upon his wife shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

⁵⁷ Section 3, The Muslim Women (Protection of Rights on Marriage) Act, 2019, Talaq to be void and illegal: Any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.

⁵⁸ Section 5, The Muslim Women (Protection of Rights on Marriage) Act, 2019, Subsistence allowance: Without prejudice to the generality of the provisions contained in any other law for the time being in force, a married Muslim woman upon whom talaq is pronounced shall be entitled to receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by the Magistrate.

⁵⁹ Section 125, Code of Criminal Procedure. 1973. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain -(a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct

marriage or keeps a concubine it is a sufficient reason for a wife to refuse to stay with him, similarly a wife who is unchaste or refuses to live with her husband without sufficient cause will not be entitled to maintenance.⁶⁰ The Magistrate may also order the husband to pay maintenance *pendente lite* and the application for the same should be disposed of within 60 days from date of service of notice to respondent. Section 125 of Cr.P.C is a secular law and any women of any religion can file an application for maintenance under this section. A similar provision has been enacted in the new Indian Criminal Law i.e., Bharatiya Nagarik Suraksha Sanhita under Chapter X, Section 144. Section 144 is discussed as under:

1.6 SECTION 144 BHARATIYA NAGARIK SURAKASHA SANHITA (BNSS)

Section 144 of BNSS states that:

- (a) If any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, a Magistrate of the first class may, upon proof of such neglect or

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation. - For the purposes of this Chapter, -(a)"minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority, (b)"wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made :Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

⁶⁰ *Supra* note 1.

refusal, order such person to make a monthly allowance for the maintenance of his wife at such monthly rate as such Magistrate thinks fit and to pay the same as the Magistrate may from time to time direct.

- (b) the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance order such person to make a monthly allowance for the interim maintenance of his wife and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same as the Magistrate may from time to time direct.
- (c) an application for the monthly allowance for the interim maintenance and expenses of proceeding shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.
- (d) Wife here includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.
- (e) Allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.
- (f) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.
- (g) No warrant shall be issued for the recovery of any amount due under this section unless application is made to the Court to levy such amount within a period of one year from the date on which it became due.
- (h) If such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by

her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

- (i) where husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.
- (j) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.
- (k) On proof that any wife in whose favor an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

1.7 SPECIAL MARRIAGE ACT, 1954

Section 37 of the Special Marriage Act, 1954, pertains to “Permanent alimony and maintenance. “It states that any court exercising jurisdiction under Chapter V or Chapter VI of the Act may, at the time of passing any decree, order that the respondent shall pay to the petitioner a monthly or lump sum alimony for the maintenance of the petitioner”.⁶¹ The section also lays down conditions under which the court may alter the maintenance amount, such as the change in circumstances of either party. This provision is aimed at ensuring the financial security and maintenance of the spouse, and it is an important aspect of the legal framework governing marriages under the Special Marriage Act, 1954.

⁶¹ Section 37 Special Marriage Act, 1954, (1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability, the conduct of the parties and other circumstances of the case, it may seem to the court to be just.

(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the district court is satisfied that the wife in whose favor an order has been made under this section has remarried or is not leading a chaste life, it may, at the instance of the husband, vary, modify or rescind any such order and in such manner as the court may deem just.

1.8 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Section 20 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) deals with the right to maintenance for the aggrieved person. The main provisions of Section 20 are as follows:

1. Monetary Relief: While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and not limited to, such as:

- a. Loss of earnings
- b. Medical expenses
- c. Loss caused due to the destruction, damage, or removal of any property from the control of the aggrieved person

2. Medical Expenses and Compensation: Section 20 of the DV Act allows the Magistrate to pass orders directing the respondent to provide medical expenses and compensation to the aggrieved person.

2. SOME IMPORTANT STEPS TAKEN

A committee was appointed by the Government of India called the “Committee on the Status of Women in India” (CSWI) on 22 September 1971 to review constitutional, legal, social, economic and educational progress of women post-independence.⁶² The committee was chaired by Vina Mazumdar. The committee submitted its report “Towards Equality” in 1974 to the Minister of Education and Social Welfare.⁶³ The key proposals addressed declining sex ratios, low female literacy, workforce marginalization and legal inequalities. Amongst many other recommendations the committee recommended uniform reforms in personal laws for inheritance, marriage and divorce equality.⁶⁴ It emphasized on fair maintenance and alimony to address women’s economic vulnerability after divorce or separation, criticizing inconsistent

⁶² Harnet Kaur, Women, Law, Court of justice in India (1970 to 2016), rais.education, last visited on 1 February 25, 2026.

⁶³ Ibid.

⁶⁴ Ibid.

personal laws that left many women in destitute.⁶⁵ It recommended standardised and time bound legal process for maintenance claims including waiving of court fee for women in distress.⁶⁶ The proposal urged the courts to ensure adequate support based on the husband's income, covering living expense, child support and rehabilitation while recognizing the unpaid household contributions of the wives.⁶⁷ Alimony was pushed as a lifelong or long-term entitlement for divorced women especially homemakers which should be calculated fairly via joint marital property shares.⁶⁸ The committee recommended that at the time of divorce a woman would be given one-third of the assets acquired by the husband at the time of marriage and during the marriage.⁶⁹

Sadly the recommendations of CSWI were largely not implemented comprehensively, the report was tabled in Parliament in 1975 but the declaration of National Emergency shortly thereafter halted serious debate and action.⁷⁰ It was buried among political turmoil with no dedicated follow-up mechanism or policy framework.⁷¹

Ms. Veena Verma, a member of the Rajya Sabha, made a courageous attempt by introducing a private member's bill in the Rajya Sabha on March 11, 1988, namely The Married Women (Protection of Rights) Bill, 1988. The Bill directly operationalized key recommendations from the 1971 Committee on the Status of Women in India (CSWI) in its Towards Equality report. It aimed to safeguard married women's property rights and economic security within matrimonial homes.⁷²

Key Provisions of the bill included:

- Joint Ownership Rights: Granted married women an equal, undivided share in the husband's self-acquired property acquired during marriage, treating it as joint family property upon matrimonial breakdown or husband's death.⁷³

⁶⁵ Leela kasturi, Development, Patriarchy, and politics: Indian Women in the Political Process, 1947-1992, cwds.ac.in last visited on 1 February 2026.

⁶⁶ Ibid.

⁶⁷ *Supra* note 62.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ *Supra* note 62.

⁷¹ Ibid.

⁷² Rsdebate.nic.in, last visited on 1 February 2026.

⁷³ The Journal of Parliamentary Information, Volume XLI, NO. 3 SEPTEMBER 1995, eparlib.sansad.in last visited on 1 February 2026.

- Protection from Dispossession: Prohibited eviction of wives or dependent children from the matrimonial home without court order which would ensure residence rights even post-separation.⁷⁴
- Maintenance and Succession: Entitled wives to maintenance from joint property and inheritance rights as co-owners, recognizing unpaid household contributions.⁷⁵
- Applicability: Extended to all Indian women irrespective of religion, overriding conflicting personal laws where applicable.⁷⁶

Sadly the bill lapsed without passage despite debates in 1994, It influenced property rights discussions but was not enacted.

The bill directly operationalized the key recommendations from 1971 Committee on the Status of Women in India (CSWI) in its Towards Equality Report.⁷⁷ CSWI explicitly urged recognizing women's contributions to marital property acquired during marriage, proposing joint ownership (with wives entitled to a share upon separation or husband's death) and treating the matrimonial home as protected joint property, precisely what the bill codified.⁷⁸ The report criticized personal laws denying women inheritance or maintenance security, advocating overrides for equal shares in self-acquired assets, the bill mirrored this by granting undivided co-ownership rights overriding religious laws, prohibiting dispossession from the matrimonial home, and linking to fair maintenance, echoing CSWI's push against destitution post-marital breakdown.⁷⁹ As private legislation amid stalled CSWI implementation (post-Emergency), it sought to enact the report's unimplemented personal law reforms for inheritance/marriage equality, influencing later debates like the 2005 Protection of Women from Domestic Violence Act.⁸⁰

In 2012 Ministry of Women and Child Development constituted the High Level Committee (HLC) on the Status of Women in India in February 2012 to assess progress since 1971's

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Towards Equality: Report of the Committee on the Status of Women in India, ruralindiaonline.org last visited on 1 February 2026.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Report of CSW to Explain the Status of Women in India, sociologydiscussion.com last visited on 1 February 2026.

Towards Equality report and recommend empowerment policies.⁸¹ The committee was headed by Professor Pam Rajput who presented findings in 2015 workshop.⁸² The four-volume report covered socio-economic-political status and its key Recommendations included, time-bound Section 125 CrPC maintenance, live-in relationship protections and steps towards Uniform Civil Code. The HLC criticized chronic judicial delays which left women in destitute during proceedings, it urged to provide a strict statutory timelines to the courts, issuing interim maintenance orders within 60 days of receiving the application and disposing of full cases within 180 days.⁸³ This aimed to enforce Section 125 CrPC's social welfare intent, with penalties for non-compliance and appeals limited to prevent further stalling.⁸⁴

Recognizing rising cohabitation without marriage, it recommended extending Section 125 CrPC explicitly to women in "relationships in the nature of marriage" (lasting 2+ years or with children), granting them equivalent maintenance, residence, and domestic violence remedies as wives, This closed gaps for economically dependent partners denied relief under personal laws.⁸⁵

HLC revived CSWI's Article 44 directive, proposing phased implementation starting with:

- Common matrimonial property regime (50:50 sharing of assets acquired during relationship, irrespective of religion).
- Harmonized divorce/maintenance laws overriding customs like talaq.
- National consultation for full UCC, prioritizing gender equality in inheritance, marriage, and adoption.⁸⁶

The reports of HCL were largely unimplemented. A 2015 workshop discussed ideas, but no national policy or amendments followed. Partial judicial echoes exist, yet systemic gaps persist without monitoring.⁸⁷

⁸¹ Press Information Bureau Government of India Ministr of Women and Child Development, pib.gov.in last visited 21 February 2026.

⁸² Ibid.

⁸³ Executive Summary, Report on the Status of Women in India, feministlawarchives.pldindia.org, last visited on 21 February 2026.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Supra at 172.

In Marriage Laws Amendment Bill, 2010, an unblemished provision was made in the law that, the wife can petition the court for a share in the husband's immovable and movable property including his residential property specifically when granting divorce on irretrievable breakdown grounds.⁸⁸ The court had discretion to order the husband to give the wife or children a "just and equitable" share or secure it via charge on immovable property.⁸⁹ This echoed 1971 CSWI's call for recognizing women's contributions via marital property shares, but remained far short of the report's joint ownership vision (automatic 50% vesting).⁹⁰ The bill lapsed, primarily due to lack of political consensus, opposition from men's right group and government inaction post 2014.⁹¹

Again in the year 2013, "Section 13(F) the Marriage Laws (Amendment) Bill 2013 as passed in Rajya Sabha, provides that the courts would decide the 'extent' of the wife's share in her husband's self-acquired property, both moveable and immoveable, in case of a divorce. While the wife will have no share in inherited property, its value will be taken into account by court while fixing the amount of compensation or alimony to her." Section 13F of the Marriage Laws (Amendment) Bill, 2013, proposed compensation provisions for wives in irretrievable breakdown divorce cases under the Hindu Marriage Act, 1955. It allowed courts, when granting a divorce decree under the newly inserted Section 13C, to order husbands to provide the wife and eligible children with compensation, including a share in the husband's non-inherited immovable property and movable assets.⁹² The 2013 Bill, passed by Rajya Sabha but not Lok Sabha, aimed to introduce irretrievable breakdown as a divorce ground after three years of separation.⁹³ It sought to make laws more women-friendly by addressing financial hardships post-divorce.⁹⁴ The Bill lapsed without becoming law, so Section 13F is not enacted. Indian courts sometimes refer its principles in judgments on alimony and property but follow existing Hindu Marriage Act provisions like Section 25 for permanent alimony.⁹⁵

Despite the lack of development of this branch of family law in India, other areas of law such as Tort law, Motor Vehicle law and Insurance have made some advances in this direction. In

⁸⁸ Prsindia.org last visited on 21 February 20026.

⁸⁹ Ibid.

⁹⁰ Main features of the towards equity report, shaalaa.com last visited on 21 February 2026.

⁹¹ *Supra* note 88.

⁹² Ibid.

⁹³ Marriage Laws (Amendment) Bill, 2013, Bindallawassociates last visited on 21 February 2026.

⁹⁴ Ibid.

⁹⁵ Ibid.

Lata Wadhwa v. State of Bihar⁹⁶, the court dealt with the monetary value of services rendered by the housewives to the households in order to compute the compensation under the Motor Vehicles Act, 1988. In Sobhag Mal Jain v. State of Rajasthan⁹⁷ quantification of the value of house work performed by woman has been followed in tort cases where there was medical negligence. Compensation amounting to Rs.6,12,000 was ordered to be recovered by the State from the negligent doctors.

3. JUDICIAL APPROACH

Indian judiciary enjoys a very crucial role as being the third pillar and guardian of our constitution. Judiciary has time and again ensured that the rights of individuals particularly women and children are protected. The judiciary has played a remarkable role in interpreting maintenance laws, determining maintenance amounts and enforcing maintenance order. Indian courts especially Supreme Court and various High Courts have played a significant role in interpreting the limited statutory provisions related to spousal property. Section 27 of Hindu Marriage Act, 1955 empowers courts to dispose of 'jointly' presented property but restricts their jurisdiction to property gifted to both the spouses at or about the time of marriage. Judicial interpretations have sometimes expanded and also sometimes restricted this scope leaving most property acquired before or after marriage outside direct court orders. The courts have clarified that property jointly presented at, before or after the marriage but in relation to it can be divided under section 27 of Hindu Marriage Act, 1955. For instance, in:

1. **Balkrishan Ramchandra Kadam v. Sangeeta Balkrishna Kadam**⁹⁸: the case concerns matrimonial property and maintenance rights following the breakdown of marriage between Balkrishna Ramchandra Kadam (husband) and Sangeeta Balkrishna Kadam (wife). The petitioner wife sought return of ornaments and other articles she claimed belonged to her under section 27 of Hindu Marriage Act, 1955. The said section governs disposal of jointly owned property received at or about the time of marriage.⁹⁹ Key legal issue was, "Does section 27 only covers property presented at the time of marriage or also property given before or after, if it relates to marriage and becomes joint property?"

⁹⁶ *Lata Wadhwa v. State of Bihar*, AIR 2001 SC 321.

⁹⁷ *Sobhag Mal Jain v. State of Rajasthan*, AIR 2006 Raj 66.

⁹⁸ *Balkrishna Kamchandra Kadam v. Sangeeta Balkrishna Kadam*, (1997) 7 SCC 500, AIR 1997 SC 3562.

⁹⁹ *Balkrishan Ramchandra Kadam v. Sangeeta Balkrishna Kadam*, casemine.com, last visited on 10 January, 2025.

The Supreme Court clarified that section 27 of Hindu Marriage Act, 1955 applies not only to property given at the time of marriage but also to items present at, before or after the marriage if they have a connection to the marriage and becomes a joint property. This expands the earlier narrow interpretation that covered only marriage time gifts.¹⁰⁰

The Court sent the matter back to the Family Court to determine which claimed items truly constituted joint matrimonial property. The family court awarded Rs.1,20,000 plus interest for gold and silver ornaments recognising them as joint matrimonial property at their value in 1982 to the wife.¹⁰¹ The wife's separate claim to a flat in Santacruz was rejected because the property could not be proven to be joint or connected to marriage cannot be resolved in matrimonial proceedings the Supreme Court further stated that such claim require an independent civil suit.¹⁰² The Supreme Court also reinforced that stridhan (women's exclusive property) remains protected unless proven otherwise.¹⁰³

The Supreme Court established that Section 27 includes property given at, before or after marriage that is linked to the marriage and becomes a joint property and relief for other assets that are not proven joint must be sought in separate legal proceedings.¹⁰⁴

The case expanded scope of Section 27 of Hindu Marriage Act, 1955 which now covers a broader range of jointly owned marital assets thus enhancing avenues for justice in matrimonial disputes.¹⁰⁵ The case also clearly established boundaries between marital (assets present at, about or after marriage which can be connected to marriage) and non-marital assets and stated that any dispute concerning the non-marital assets must go through a separate civil suit. The decision supports fair treatment of the non-earning spouse regarding joint marital property in divorce or separation cases.¹⁰⁶ This judgement remains a leading authority on the topic of division of matrimonial property under Indian Law.

2. **Surinder kaur v. Madan Gapal Singh**¹⁰⁷: It is a notable judgement of Punjab and Haryana High Court that interprets section 27 of Hindu Marriage Act, 1955. The court ruled that

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

¹⁰⁷ *Surinder Kaur v. Madan Gapal Singh*, AIR 1980 Punjab and Haryana High Court 157.

section 27 covers not only property presented at the time of marriage but also includes property given before or after the marriage as long as the property is connected to the marriage.¹⁰⁸ It also held that property bought by the husband in the wife's name after marriage can fall under this section and be subject to division by the court. The court emphasized that the disposal of such a property should be done in a just and a proper manner taking into consideration the acceptance of the shares by the parties. The property concerned may be given to either spouse individually or both spouses jointly based on what is equitable under the circumstances.¹⁰⁹ This judgement aligns with the Supreme Court's decision in *Balkrishna Ramchandra Kadam v. Sangeeta Balkrishna Kadam*¹¹⁰ thus reinforcing the broad temporal scope of property covered by section 27. The decision points to the limited but important judicial scope of matrimonial property law in India, which mainly confines division to property gifted or jointly owned and directly related to the marriage.¹¹¹

This case is widely cited for arguing a broader interpretation of matrimonial property, protecting spouses' rights to jointly held or marriage-connected property acquired before, at or after marriage, especially when resolving disputes after divorce or separation in India. It highlights the necessity for courts to distribute such property fairly but within the restrictive framework of section 27 of Hindu Marriage Act, 1955.¹¹²

In summary, *Surinder kaur v. Madan Gopal Singh* affirms the court's power to adjudicate matrimonial property disputes under section 27 of Hindu Marriage Act, 1955 comprehensively, ensuring just and equitable disposal of marriage related property regardless of the time of acquisition. However, it also underscores the continuing limitations of matrimonial property law in India.¹¹³

3. **Debika Chakraborty v. Pradip Chakraborty**¹¹⁴: It is a notable case addressing property rights and benami transactions in matrimonial disputes in India. The dispute involves

¹⁰⁸ Division of Matrimonial Property after Divorce, iPleaders, blog.ipleaders.in, last visited on 11 March 2026.

¹⁰⁹ Distribution Of Matrimonial Property During Divorce In India, Jus Corpus Law Journal, juscorpus.com, last visited on 12 March 2026.

¹¹⁰ *Balkrishna Kamchandra Kadam v. Sangeeta Balkrishna Kadam*, (1997) 7 SCC 500, AIR 1997 SC 3562.

¹¹¹ *Ibid.*

¹¹² Divya Thakur, "Spousal Property Law in India: A Solace to Spouses." III Indian Journal of Integrated Research in Law, Issue IV.

¹¹³ Kunwar Abhijeet, "Division of Matrimonial Property after Divorce", Pleaders by Law Sikho, 2021.

¹¹⁴ *Debika Chakraborty v. Pradip Chakraborty*, AIR 2017 Calcutta 11.

ownership of property (a flat) registered in the name of Debika Chakraborty his wife while the husband, Pradip Chakraborty, claimed that the property was effectively owned by him or his companies (benami transaction). The husband argued that although the deed was in wife's name but the purchase money came from him or from the companies in which he held major stakes. The courts examined the financial evidence to track the source of money used for the acquisition of the property and held that the money did come from the husband and the companies. Courts also considered whether the property transaction was benami or not and considered it under Benami Transactions (Prohibition) Act, 1988.¹¹⁵

The court noted that the husband's claim of benami was barred under section 4(2) of the Benami Transactions (Prohibition) Act, 1988 because the claim was not timely and properly pleaded. The court emphasized that registered deeds have presumptive validity that cannot be lightly disturbed unless cogent evidence exists. The court also addressed the fiduciary relationship between husband and wife can influence property rights but it rejected the notion that such relationship imposes the fiduciary obligation automatically. The court upheld the husband's financial contribution for purchasing the property despite the legal title being in the wife's name, yet the benami claim was legally restricted.¹¹⁶

The case clarifies that the courts closely examine the source of money for consideration of property in matrimonial disputes and not just the legal title. Registered property is presumed to be in the name of the title holder but documented proof of financial contributions by the other spouse can influence ownership claims. The case further stated that claims under the Benami Transactions (Prohibition) Act, 1988 must meet the stringent procedural requirements.¹¹⁷

The case highlights the complexity of property rights in matrimonial disputes when the ownership and financial contributions diverge.¹¹⁸

4. Hemant Kumar Agrahari v. Lakshmi Devi¹¹⁹: Hemant Kumar and Lakshmi Devi married April 2996. The marriage was short and reportedly never consummated. The wife

¹¹⁵ Whether Courts Can Decide Legal Question if it is not Pleased? LAW WEB, lawweb.in, last visited on 12 March 2026.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Joint Property After Divorce in India, lawrato.com, last visited on 11 January, 2025.

¹¹⁹ *Hemant Kumar Agrahari v. Lakshmi Devi*, AIR 2004 ALL 126.

alleged adultery and cruelty on husband's part and filed for divorce under section 13 of Hindu Marriage Act, 1955 and sought return of goods and cash gifted at the time of marriage under section 27 of the said Act.¹²⁰ The core issue was scope of Section 27 of Hindu Marriage Act, 1955. Does the matrimonial court have jurisdiction to order the return of property and cash gifted at or about the time of marriage and does this authority extend to exclusive property of the spouses?

Whether the family court can direct return of all the gifts claimed or cash or only certain joint property presented at marriage.

The Family Court granted divorce under section 13 of the Hindu Marriage Act 1955, on the grounds of adultery and cruelty by the husband. This part was not challenged in the appeal. Further the Family Court ordered return of Rs.75,000 in cash and some specific goods mentioned in the plaint given at the time of marriage. The husband appealed against the order to return cash and goods and the wife cross-appealed for items not granted.¹²¹

The Allahabad High Court held that Section 27 of Hindu Marriage Act, 1955 permits the court to return property or cash jointly belonging to the spouses and gifted 'at or about the time of marriage'. The court further held that the court's power under section 27 of the said Act does not extend to exclusive property of the either spouse be it stridhan or self-acquired property which is clearly owned by one spouse. Only the properties which are jointly presented at the time of marriage or are connected with marriage and qualify as a 'joint property' fall under the ambit of section 27 and are eligible for division or return under the said section. The court declined to return the property for which joint status or connection to the marriage was not proved sufficiently. The appeal and cross-appeal were resolved accordingly, maintaining limits on the trial court's powers to divide or dispose only joint marital property.¹²²

The case aligns with the principle established in *Balkrishan Ramchandra Kadam v. Sangeeta Balkrishna Kadam*¹²³ and subsequent cases holding that only property connected

¹²⁰ Ibid.

¹²¹ Renuga Devi. A, *Property Right of the Spouses Under HMA, 1955 and Pre-Nuptial Agreements in Safeguarding the Property Rights in India- An Analysis*, 12 Journal of Emerging Technologies and Innovative Research (JETIR), Issue 2, 2025.

¹²² Ibid.

¹²³ *Balkrishna Kamchandra Kadam v. Sangeeta Balkrishna Kadam*, (1997) 7 SCC 500, AIR 1997 SC 356.

to the marriage falls under the scope of section 27 further clarifying the limited role of Indian matrimonial courts.¹²⁴

The case affirms the strict and narrow approach and interpretation of ‘joint property’ and the timing and occasion of presenting the same as a condition for relief under section 27 of Hindu Marriage Act, 1955.¹²⁵ It further affirmed that exclusive property of a spouse cannot be directed to return or division under section 27 of the Act.

The judiciary has also played a remarkable role in interpreting maintenance laws, determining maintenance amounts and enforcing maintenance order. Some landmark judgements are listed hereunder:

1. **Shah Bano Begum v. Mohd. Ahmed Khan**¹²⁶: A landmark Judgement wherein the Supreme Court held that a Muslim woman is entitled to maintenance from her husband under section 125 of the Code of Criminal Procedure, 1973. The summary of the case is discussed here under:

Shah Bano Begum was 62-year-old women who was divorced by her husband after 43 years of their marriage and was given only 200 rupees as *Mehar* (a some promised at marriage). The husband refused to provide her with any further maintenance. Wife filled a petition under 125 of Code of Criminal Procedure, which applies to all citizens regardless of their religion. Husband argued that under Muslim personal law he was only obligated to provide maintenance during *iddat* period i.e. three months after divorce, during which he paid her *Mehar* and maintenance for those three months.¹²⁷ The issue before the court was that weather a Divorced Muslim women was entitled to receive maintenance from her former husband under section 125 of the Code of Criminal Procedure, 1973.

The Supreme court held that section 125 of the Code of Criminal Procedure, 1973 applies to Muslim women as well and they are also entitled to receive maintenance from their former husbands like any other women belonging to a different faith and it overrides

¹²⁴ Renuga Devi. A, *Property Right of the Spouses Under HMA, 1955 and Pre-Nutial Agreements in Safeguarding the Property Rights in India- An Analysis*, 12 Journal of Emerging Technologies and Innovative Research (JETIR), Issue 2, 2025.

¹²⁵ Anil Malhotra and Ranjit Malhotra, *Maintenance, Non-Resident Indian and the Law, isfl.world, last visited on 12 January 2025*.

¹²⁶ *Shah Bano Begum v. Mohd. Ahmed Khan* AIR 1985 SC 945, (1985) 2 SCC 556.

¹²⁷ *Ibid*.

personal law on the issue of maintenance. Court emphasized that payment of *Mehar* does not discharge the husband's liability to pay maintenance.¹²⁸ It further held that *Mehar* is not a substitute of maintenance, *Mehar* is a sum of money given or promised to be given at the time of marriage and not at the time of divorce.¹²⁹ The verdict also highlighted the need to implement a Uniform Civil Code, Article 44 of the Indian Constitution, to promote equality and integration.¹³⁰

The case triggered a nationwide debate on women's rights, secularism and religious personal laws and had significant implications for Muslim Women's right in India and received a significant backlash from conservative Islamic groups in reaction to which Parliament enacted of the Muslim Women (Protection of Rights on Divorce) Act, 1986, restricting maintenance for Muslim women to the *iddat* period.¹³¹ Though the resulting legislation initially diluted the judgement but Shah Bano case remains a cornerstone for the rights of divorced Muslim women in India, affirming their right to maintenance and asserting the primacy of fundamental rights and secular law over religious personal law in matters of basic welfare.¹³²

- 2. Denial Latiffi V. Union of India**¹³³: The Supreme Court upheld the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The Petitioner Danial Latifi, who argued in Shah Bano case, challenged the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 in this case. The petitioner argued that the Act is discriminatory and violates the fundamental rights of Muslim women mentioned in Articles 14, 15 and 21 of Indian Constitution.¹³⁴ The issue before the Supreme Court was whether the Muslim Women (Protection of Rights on Divorce) Act, 1986 is constitutional and whether it protects the rights of Muslim women.

The Supreme Court held that the Act is constitutional and it protects the rights of Muslim Women after divorce including the right to maintenance and interpreted section 3(1) of the act which provides for the payment of maintenance to the divorced wife during *Iddat*

¹²⁸ Shah Bano Begum v. Mohd. Ahmed Khan, Dhyeyalaw.in, last visited 12 March 2026.

¹²⁹ *Supra* note 126.

¹³⁰ *Supra* note 128.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Denial Latiffi V. Union of India* (2001) 7 SCC 740, AIR 2001 SC3958.

¹³⁴ *Ibid.*

period. Court held that a reasonable and fair provision extending beyond *Iddat* period must be made by the husband during *Iddat* period itself.¹³⁵

The decision in the case upheld the rights of Muslim women. It clarified and interpreted the provisions the Act and strengthen the rights of Muslim women.

3. **Kulbhushan Kumar v. Raj Kumari and Anr**¹³⁶: The Supreme court decided on the amount of maintenance to be paid to the wife, as she was already receiving money from her father. Parties got married in 1945. After a while, the husband no longer wanted to live with the wife, and they were completely estranged. In August 1946, they had a daughter. Wife claimed maintenance for herself and her daughter through a registered post in 1951, and she later filed a maintenance suit in 1954. The High Court took into account that the husband was a Reader in Medicine with a monthly salary of around Rs.700 and a private practise income of more than Rs.250. The High Court decided that the wife is entitled to a maintenance of Rs.250 per month and the daughter should be given Rs. 150 per month according to Section 23(2) of the Hindu Adoptions and Maintenance Act, 1956, subject to a limit of 25% of the respondent's income as determined by the income-tax authorities.¹³⁷

In this appeal to the Supreme Court by the wife the question of allegiance to the wife's maintenance was raised.

Supreme Court held that, "even if the wife had received money from her father on a regular basis, it could only be considered a gift and not a source of income. As a result, it could not be taken into account in determining the amount of maintenance under Section 23(2)(d) of the Act. Furthermore, there is no evidence of her inheriting any of her father's property after his death. If she inherited property, the burden of proving the same was on husband and he failed to do so. Court further held that the amount payable as maintenance depends on the facts of each case. In the circumstances of this case, there is no deviation from the amount determined by the High Court, as well as the date from which maintenance could be claimed, could be made." While the high court applied a 25% income cap, the Supreme court made it clear that there is no strict fixed percentage for maintenance and that each situation is different and unique. The supreme court emphasized that the amount of

¹³⁵ Ibid.

¹³⁶ *Kulbhushan Kumar v. Raj Kumari and Anr*. 1971 AIR 234, 1971 SCR (2) 672.

¹³⁷ Ibid.

maintenance must be determined after considering facts like, status and means of both the parties, standard of living and what is considered reasonable in the given circumstances.¹³⁸

The case established two key principles:

- First that the maintenance is contextual and cannot be calculated by a formula. All the circumstances such as means, estate, parties, their status, prior lifestyle etc. must be balanced.
- Secondly that a husband has a moral and statutory duty to support his wife and minor children regardless of temporary or voluntary support given by others.

The case is frequently cited for establishing guidelines on how maintenance should be determined and rejecting a mechanical application of a fixed percentage of income.¹³⁹

4. Ravindra Haribhau Karmarkar v. Mrs. Shaila R. Karmarkar¹⁴⁰: Is a significant case of Bombay High Court that addresses the issue of claiming maintenance relief from multiple courts simultaneously. The wife, Mrs. Shila R. Karmarkar sought maintenance under Section 125 of Code of Criminal Procedure, 1973 in a criminal court, while a civil proceeding under section 13 of Hindu Marriage Act, 1955 was ongoing in the principal civil court where interim maintenance had already been granted.¹⁴¹key legal issue was “Whether a wife can maintain simultaneous maintenance claims in different courts for the same relief?”

The court held that once interim maintenance is granted by the civil court, the criminal court proceedings for the same relief should be stayed. It is impossible to claim same relief twice in parallel proceedings. Court held that “one cannot ride two horses at the same time”. The court further held that the findings and orders of one court (civil court in this case) are binding on the other court (Criminal court) to avoid multiplicity of litigation and conflicting orders. The ruling emphasized on the prevention of “double maintenance” or “double fold

¹³⁸ Ibid.

¹³⁹ *Kulbhushan Kumar v. Raj Kumari and Anr.*, Judgements, B&B ASSOCIATES LLP, bnblegal.com, last visited on 12 March 2026.

¹⁴⁰ *Ravindra Haribhau Karmarkar v. Mrs. Shaila R. Karmarkar*, 1992 Cri LJ 1845.

¹⁴¹ Ibid.

recovery” from the same respondent for the same period.¹⁴²

The judgement promotes judicial economy by preventing conflicting orders on maintenance made by different courts. It anchors the principle that multiple claims for the same maintenance relief cannot be pursued concurrently. In the essence this case sets a precedent that maintenance relief granted in one proceeding bars parallel or successive claims in another, ensuring no duplication of relief and avoiding abuse of court processes. This promotes fairness and coherence in judgements regarding matrimonial maintenance.¹⁴³

5. **Mamta Jaiswal Vs. Rajesh Jaiswal**¹⁴⁴: In this case the Hon'ble High Court of Madhya Pradesh held that a well-qualified spouse desirous of remaining idle and not making efforts to find out a source of livelihood, has to be discouraged. Court further held that a lady, who is fighting matrimonial litigation, cannot be permitted to sit idle and put her burden on the Husband for interim maintenance from him during pendency of matrimonial petition. Section 24 of Hindu Marriage Act, 1955 is not a way for creating an army of idle person who would be waiting for a "dole" to be awarded by her Husband who has got a grievance against her and who has gone to the court for seeking relief against her. The case may be vice versa also. The law does not help indolent; it also does not want an army of self-made lazy idles. Everyone has to earn or at least has to make sincere efforts in that direction. If this criterion is not applied, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversary who happens to be a spouse. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of amicable settlements because he would be reaping the alimony. This is not the goal of section 24.¹⁴⁵
6. **Vijay Kumar v. Harsh Lata Aggarwal**¹⁴⁶ In this case the Hon'ble High Court of Delhi has held that “when Income of both husband and wife are almost similar and both almost equally qualified, there is no justification to grant interim maintenance to the wife. The wife Harsh Lata Aggarwal was a post graduate in law, a practicing advocate and a notary

¹⁴² Ibid.

¹⁴³ 125 CrPC Maintenance Judgements Summary, SCRIBD, scribd.com, last visited on 12 March 2026.

¹⁴⁴ *Mamta Jaiswal v. Rajesh Jaiswal*, 2000 (3) MPLJ 100; II (2000) DMC 170.

¹⁴⁵ Ibid.

¹⁴⁶ *Vijay Kumar v. Harsh Lata Aggarwal* CM (M) No.539/2008 Delhi High Court.

public, the husband Vijay Kumar was a retired engineer with business interests. The wife sought interim maintenance and litigation expenses claiming that she was not working during marriage and had no regular income. The husband argued that she is a well-qualified and enrolled the Supreme Court Bar, has professional income and adequate investments.¹⁴⁷

The High Court found that both the parties are almost equally qualified and had comparable incomes based on affidavits and income tax returns. The High Court set aside the trial court's order of maintenance as it was passed only considering husband's income and qualifications and ignoring the qualification and prior professional income. The Court held that there was no justification for granting interim maintenance to wife when both the spouses are capable of earning and have similar qualifications and prior earnings. It was further emphasized that maintenance is not a means for a person capable of self-support to remain idle or seek comfort at the expense of other spouse.¹⁴⁸

The ruling reinforced the principle that maintenance under Section 24 of Hindu Marriage Act, 1955 is intended for genuinely needy spouse and not for those who deliberately chose to remain idle despite the adequate qualification and earning potential.¹⁴⁹

The decision is frequently cited when both the spouses are professionals and courts are urged to assess actual financial status of both the parties before deciding on maintenance.

- 7. Rachna Kathuria v. Ramesh Kathuria¹⁵⁰:** The wife was already receiving maintenance from husband under Section 125 of Code of Criminal Procedure, 1973 yet she still filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

The main issue was whether a wife can maintain multiple simultaneous petitions for maintenance under different statutes especially when she has already been granted maintenance under one provision?¹⁵¹

The Delhi High Court dismissed the wife's appeal for additional maintenance under the Domestic Violence Act, 2005. The Court clarified that the Protection of Women from

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ *Rachna Kathuria v. Ramesh Kathuria* CrI. M.C. No. 130/2010, Delhi High Court and CrI. M.A. no. 504/2010.

¹⁵¹ Ibid.

Domestic Violence Act does not confer new rights to claim maintenance but only enforces a right that already exists. If the applicant has already secured maintenance from another legal proceeding, she cannot claim additional maintenance under the said Act. The judgement established that multiple petitions for maintenance are not allowed and if maintenance has already been granted under one law, further claims under different law for additional amounts are not maintainable.¹⁵²

This case is frequently cited to reject the possibility of “double maintenance” i.e. drawing multiple maintenances from multiple parallel proceedings for the same period and marital status. This decision aims at preventing multiplicity of proceedings and provide safeguard against unjust enrichment at the expense of the respondent.¹⁵³

8. **Bhushan Kumar Meen v. Mansi Meen @ Harpreet Kaur**¹⁵⁴: In this case while reducing the maintenance amount from Rs.10000/- to Rs.5000/- granted by the lower court to the wife, the Supreme Court observed 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. However, having regard to the qualifications that she possesses, there is no reason why she ought not to be in a position to maintain herself in the future.”¹⁵⁵

Husband, Bhushan Kumar Meen challenged the orders of Additional Chief Judicial Magistrate, Patiala and upheld by the Punjab & Haryana High Court directing him to pay Rs.10000/month as interim maintenance to wife Mansi Meen @ Harpreet Kaur. He contended that the amount was excessive given his actual take-home pay was lower after deductions (home loan payments). He also contended that though his wife was currently unemployed but is capable and qualified to work.¹⁵⁶

The Supreme Court considered the husband’s financial circumstances, including the EMI deductions, his net monthly pay, wife’s qualifications and her unemployment status. The Court held that although the wife is not employed but her educational background indicates that she should be able to support herself in future. The quantum, Rs.10000 per month,

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ *Bhushan Kumar Meen v. Mansi Meen* (2010) 15 SCC 372.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

granted by the lower court was deemed excessive and was reduced to Rs.5000 per month, all other terms and conditions imposed by the lower court remained unchanged. The judgement emphasized balancing between genuine need and ability to earn, underlining that maintenance should be in line with actual financial capability and fair expectations given the wife's qualifications.¹⁵⁷

The ruling prioritizes both reasonable support and incentive for self-sufficiency, especially where wife is adequately qualified but currently unemployed. The ruling also established that the courts should fix the maintenance keeping in mind husband's net income after necessary deductions and consider the wife's potential to earn and not just her present unemployment.¹⁵⁸

9. **Damanreet Kaur v. Indermet Juneja & Anr**¹⁵⁹: In this case Delhi High Court held that "if the wife was working in past and resigned from the employment, she is not entitled for maintenance under Domestic Violence act. The question whether the wife was forced to resign or she has resigned herself is a question to be considered by the court during trial and also the question whether the reason given by her for resigning were satisfactory or not. These are the question to be gone in to during evidence by the Id. Trial Court."¹⁶⁰

The wife, Damanreet Kaur filed a complaint under section 12 of the Protection of women from Domestic Violence Act, 2005, seeking interim maintenance and maintenance under section 23 of the said Act. The Metropolitan Magistrate declined her request for interim maintenance and on appeal Sessions Judge partly allowed her claim wherein maintenance for herself was denied because she was well qualified, capable and gainfully employed previously. However, the respondent husband, Indermet Juneja was directed to pay Rs. 10000 per month towards the maintenance of the child from the date of filing.¹⁶¹

The court held the wife is well qualified and was working previously which indicated that she had capacity to earn and maintain herself. The court emphasized that the law does not support a situation where a well-qualified spouse chose to remain idle and burdens the other spouse. The said case supported the principle established in the Mamta Jaiswal v. Rajesh

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ *Damanreet Kaur Vs. Indermet Juneja & Anr.* CRL.REV. P. 344/2011.

¹⁶⁰ Ibid.

¹⁶¹ Ibid.

Jaiswal¹⁶². Court further held that maintenance under section 23 of the Domestic Violence Act, 2005 and section 125 of the Code of Criminal Procedure, 1973 involves both 'need' and genuine incapacity to maintain oneself, not mere unemployment by choice. Court also held that it is not necessary to implead a child as a party and awarded maintenance to the child regardless of the custody arrangements.¹⁶³

The case reinforced that a well-educated and previously employed spouse cannot claim maintenance simply because she voluntarily chooses not to work unless reasonable grounds exist for her not working. The case sets an influential precedent in maintenance jurisprudence, clarifying that idleness or lack of income by choice does not entitle a spouse to monetary relief. The judgement also clarified procedural aspects of section 23 of the Domestic Violence Act, 2005 including maintenance rights of children and non-requirement of impleading child as a party.¹⁶⁴

10. Shailja & Anr. v. Khobanna¹⁶⁵ : Is a notable Supreme Court Judgement stating that just because a wife is capable of earning does not mean her maintenance should be reduced, and that whether a wife can earn, and is earning are two different factors. The wife and her son sought maintenance from the husband. The Family Court awarded Rs. 15,000 per month for the wife and Rs. 10,000 for the son. The Karnataka High Court reduced the maintenance amounts to Rs. 6000 each reasoning that the wife was capable of earning as a teacher.¹⁶⁶ Whether a professionally capable wife who is able to earn can claim maintenance from her husband, and the distinction between capability to earn and actual earning.¹⁶⁷

The Supreme Court reversed the High Court's reduction and restored the Family Court's original maintenance order. The Court clarified that being capable of earning does not mean the wife should be denied or given a reduced maintenance. The Court emphasized the difference between the capability of earning and actually earning. Court further highlighted that the purpose of maintenance is to intend to ensure that the wife can maintain a standard of living similar to that during the marriage. The husband's ability to pay and wife's actual

¹⁶² *Supra* note 118.

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.*

¹⁶⁵ *Shailja & Anr. V. Khobanna*, AIR 2017 SC 1174.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

needs must be considered. This decision reinforced that maintenance rights of a wife do not vanish merely because she has earning capacity, rather her actual earnings and ability to sustain her prior lifestyle are paramount.¹⁶⁸

This case is often cited to uphold the principle that a wife's right to maintenance is based on her actual needs and realistic assessment of her financial independence and not just her potential earning capacity. It protects the women who are capable of earning but are not earning sufficiently to support themselves in a lifestyle comparable to their marital standard. The case promotes fairness and social justice in maintenance law by focusing on practical realities over theoretical capabilities.¹⁶⁹

11. Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy¹⁷⁰: the Supreme Court held that 25% of the husband's net salary would be just and proper as maintenance to the wife and the amount of permanent alimony awarded to the wife must be commensurate with the status of the parties and the ability of the spouse to pay maintenance. The parties married in 1995 and had a son in 1996, who is now a major and pursuing college education. The Husband worked at Malda Medical College with net monthly salary around Rs. 87,500 to Rs. 95,000. The wife was a qualified beautician and Montessori teacher earning about Rs. 30,000 per month. The couple face marital disputes leading to several rounds of litigation primarily concerning maintenance and alimony.¹⁷¹

The appellant challenged the enhancement order passed by the Calcutta High Court which increased his maintenance liability from Rs. 16,000 to Rs. 23,000 per month. The Husband argued that increased maintenance was excessive relative to his income and to the wife's earnings. The Supreme Court upheld the High Court's decision to enhance the maintenance amount. The Court held that the maintenance should be about roughly 25% of the Husband's income. It recognised the wife's right to maintenance despite her earning capacity based on her actual earnings and her lifestyle. The ruling took into account husband's income and his responsibilities including his son's education.¹⁷²

The case sets an important precedent concerning maintenance law. It reinforces that

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ *Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy*, AIR 2017 SC 2383.

¹⁷¹ Ibid.

¹⁷² Ibid.

maintenance is not just a token of sum given by husband to wife but a realistic support reflecting the husband's ability and the wife's needs. It underlined that courts can enhance the maintenance amounts due to change in circumstances. The ruling reiterates that the maintenance should be approximately 25% of the husband's income but must be tailored to the facts of each case. The case also highlights that a wife's moderate income does not automatically reduce her maintenance if her needs and lifestyle justify the allowance.¹⁷³

12. Alphonsa Joseph v. Anand Joseph¹⁷⁴: A Kerala High Court case that addresses the issue of maintenance for a wife who is qualified and capable of earning but chooses not to work. The petitioner, Alphonsa Joseph, is a qualified doctor with a Bachelor of Dental Surgery (BDS) degree. The respondent, Anand Joseph, challenged the maintenance claim on the ground that the wife is qualified and capable of earning and maintain herself.¹⁷⁵ The High Court of Kerala stated that “maintenance to a wife cannot be denied solely because she is qualified and capable of earning money but refuses to work. The High Court, citing the Supreme Court's decision in *Sunita Kachwaha and Ors. v. Anil Kachwaha*¹⁷⁶ stated that even if the wife was earning some money, that was not necessarily a reason to deny her maintenance application outright. The High Court also stated that, as held by the Supreme Court in a series of decisions, the concept of sustenance does not necessarily imply living in poverty and begging for basic necessities. In law, the wife has the right to live in the same manner as she would have in her husband's home, with respect and dignity. The husband is not entitled to argue that he is unwilling to pay any maintenance, and the courts are unlikely to accept the husband's blatant refusal with folded hands. If the Family Court decides to deny interim maintenance to the wife or to pay a lower amount than the minor child is entitled to, it must do so for legally permissible reasons, not on the basis of a memo filed by the husband.¹⁷⁷

This case reinforces the principle that the Courts assess the actual circumstances and needs of the wife including the reasonableness of expecting her to work. It protects the rights of the wife who are qualified but are not earning at all or not earning sufficiently enough to support themselves, ensuring that they are not unjustly denied financial support. Thus it

¹⁷³ Ibid.

¹⁷⁴ *Alphonsa Joseph v. Anand Joseph* 2018 SCC OnLine Ker 5012.

¹⁷⁵ Ibid.

¹⁷⁶ *Sunita Kachwaha and Ors. v. Anil Kachwaha* Criminal Appeal no. 2310/2014.

¹⁷⁷ Ibid.

reiterates the principle that maintenance should not be denied to a wife simply because she is qualified to earn, her actual earnings or employment status and ability to sustain herself are the relevant factors for maintenance claims.

13. Rajnesh v. Neha & Anr¹⁷⁸: In this very latest judgment the Hon'ble Supreme Court answered various questions regarding maintenance and laid down important guidelines for determining maintenance allowance. Wife filed for interim maintenance under Section 125 of Code of Criminal Procedure, 1973 for herself and her minor son. The Family Court ordered maintenance which was appealed by the husband up to the Supreme Court. The case brought up important systemic issues in the maintenance in India, including overlapping remedies, criteria and procedures.¹⁷⁹ Legal issues were as under:

- Overlapping jurisdictions for maintenance under different laws i.e. CrPC, Hindu Marriage Act, Hindu Adoptions and Maintenance Act etc.
- Effective determination and enforcement of interim and permanent maintenance.
- Criteria to assess quantum and date for payment of maintenance.

Supreme Court held that if maintenance is awarded under one law, the amount already granted should be considered when passing orders under different law to prevent “double maintenance”. The court mandated filing detailed discourse of income, assets and liabilities by both parties to ensure fairness and prevent concealment of financial capacity. The Court also laid out detailed factors for deciding the maintenance amount i.e., status of the parties, reasonable needs of the spouse and children, income, lifestyle, liabilities and other relevant circumstances. The Court further held that maintenance should ordinarily be granted from the date of application and not from the date of order, ensuring expeditious relief. Court also laid down following directions to be followed by the courts while passing the maintenance orders:

1. Family Courts to decide substantive petitions for maintenance under Section 125 CrPC within six months.
2. The procedures must be standardized and streamlined to avoid delays.

¹⁷⁸ *Rajnesh v. Neha & Anr.* AIR 2021 SC 569; (2021) 2 SCC 324.

¹⁷⁹ *Ibid.*

3. Courts must record reasons for determining the quantum of maintenance.
4. Arrears have to be cleared within a set timeframe.
5. Nonpayment of maintenance may be enforced as a civil decree.

It is a precedent setting judgement that lays out comprehensive procedural and substantive guidelines for all Indian courts on how to effectively and justly determine and enforce maintenance claims, with an emphasis on transparency, non-overlapping reliefs and prompt interim support. The judgement is a landmark in standardizing and simplifying the procedure for maintenance in India. It ensures fairness, curbs misuses and enhances practical enforceability of maintenance orders. The clear guidelines provided by the Supreme Court on disclosure and overlapping claims bring much needed clarity to Indian Family Law.¹⁸⁰

14. Parvin Kumar Jain v. Anju Jain¹⁸¹ : Parvin Kumar Jain and Anju Jain were married in December 1998 and began living separately in January 2004 due to irreconcilable differences.¹⁸² Despite prolonged litigation for over 20 years, reconciliation proved impossible and the marriage had effectively broken down. The couple had one son, born in May 2001, who remained with the mother.¹⁸³ Key Legal Issues were as under:

- What quantum of permanent alimony should be awarded to the wife considering the husband's financial capacity and the irretrievable breakdown of marriage?
- Whether the husband's obligation extends to maintenance for their adult son, who had completed B.Tech but was yet to be financially independent.

The Supreme Court exercised powers under Article 142 of the Constitution and Sections 24 and 26 of the Hindu Marriage Act, 1955.¹⁸⁴ The Court awarded a one-time settlement of ₹5 crores to the wife to meet all her claims, ensuring a reasonable standard of living post-divorce. ₹1 crore was awarded for the son's education and financial security, recognizing the continued obligation of the father until the son became financially independent even though he was a

¹⁸⁰ Ibid.

¹⁸¹ *Parvin Kumar Jain v. Anju Jain*, 2024 INSC 961.

¹⁸² *Parvin Kumar Jain v. Anju Jain (2024)- Case Analysis*, testbook.com, last visited on 13 June 2025.

¹⁸³ *Parvin Kumar Jain v. Anju Jain (2024)- Case Analysis*, lawfoyer.in, last visited on 13 June, 2025.

¹⁸⁴ Ibid.

major.¹⁸⁵ The judgment emphasized that alimony awards should not be punitive towards the husband but must safeguard the wife's dignity and financial future. The Court considered the prolonged marriage, separation duration, parties' social status, financial disclosures, sacrifices made by the wife, and the child's educational prospects in reaching its decision.¹⁸⁶

This judgment sets a benchmark for large one-time alimony awards in cases of irretrievable marital breakdown, balancing fairness, security, and dignity for the dependent spouse and child. The Court's progressive interpretation recognizes obligations even for adult children pursuing higher education and prioritizes dignified financial settlements over drawn-out monthly payments. The verdict is guiding future matrimonial settlements regarding both quantum and methodology of alimony, stressing non-punitive treatment for the payer and substantive justice for the recipient. The judgement reflects changing judicial attitudes toward alimony, emphasizing complete, fair, and dignified settlements in long-standing marital disputes, with significant attention to dependent spouses and children.¹⁸⁷

15. Rakhi Sadhukhan v. Raja Sadhukhan¹⁸⁸: Rakhi Sadhukhan and Raja Sadhukhan were married in June 1997. Their son was born in August 1998. The couple separated in 2008 after prolonged marital discord and the husband sought divorce on grounds of cruelty and desertion. The Calcutta High Court granted divorce in 2019 and fixed permanent alimony at ₹20,000/month. The wife remained unmarried and claimed to be solely financially dependent on maintenance. Their son, now 26, is financially independent. Dissatisfied with the alimony, Rakhi appealed before the Supreme Court, contending the amount was inadequate and did not reflect her marital standard of living or rising costs due to inflation.¹⁸⁹ Key Legal issues were:

- Quantum of Alimony: Was ₹20,000/month adequate for the wife's dignity and maintenance of her former lifestyle?
- Should permanent alimony reflect inflation and the respondent-husband's true financial capacity?

¹⁸⁵ *Parvin Kumar Jain v. Anju Jain (2024)- Case Analysis*, lawbeat.in, last visited on 13 June, 2025.

¹⁸⁶ *Supra* at note 131.

¹⁸⁷ *Supra* at note 131.

¹⁸⁸ *Rakhi Sadhukhan v. Raja Sadhukhan*, 2025 INSC 789.

¹⁸⁹ *Rakhi Sadhukhan v. Raja Sadhukhan*, dhyeyalaw.in, last visited 12 June 2025.

- Obligation for Adult Son: Is the husband required to maintain their 26-year-old son?

The Supreme Court doubled the monthly payment to ₹50,000, to be raised by 5% every two years to keep pace with inflation.¹⁹⁰ The Court affirmed that alimony must ensure the recipient maintains a standard of living comparable to that enjoyed during marriage, focusing on the right to dignity and stability.¹⁹¹ Following factors were considered:

1. Husband's net income (approx. ₹1.64 lakh/month),
2. Wife's continued financial dependence,
3. Absence of independent income, and
4. duration of marriage.

The Court denied maintenance obligation for their son as he is a financially independent adult, although his inheritance rights remain intact.¹⁹² Further, all related contempt petitions and applications were disposed of, and the judgment provided future guidance on inflation-indexed alimony and maintaining prior lifestyle.

The case sets a clear precedent for Family Courts to assess alimony based on marital lifestyle, spousal dependence, and inflation—marking a shift away from purely symbolic or stagnant awards. The judgment echoes progressive statutes (BNSS Section 144, Section 25 HMA) protecting dependent spouses from destitution, embedding dignity and parity in matrimonial reliefs.¹⁹³ It further reaffirmed that the Courts may modify and increase alimony even many years after separation if the recipient remains dependent. In essence, this landmark decision redefines permanent alimony as a substantive right rooted in preserving marital dignity and financial stability, adjusting for cost of living and the real financial position of the spouse liable for maintenance.¹⁹⁴

The Indian Judiciary has played a transformative and proactive role in shaping maintenance and spousal property laws in India largely through the landmark judgements cited above and

¹⁹⁰ *Rakhi Sadhukhan v. Raja Sadhukhan* case analysis, testbook.com, last visited on 12 June 2025.

¹⁹¹ *Ibid.*

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*

creative interpretation of statutes to address gaps, uphold constitutional principles and ensure social justice. The courts have interpreted section 125 of Code of Criminal Procedure, 1975, section 24 and 25 of the Hindu Marriage Act, 1955 and section 18 of Hindu Adoptions and Maintenance Act, 1956 to ensure that spouse who is unable to maintain himself or herself receives a fair support. Through cases like *Rajnesh v. Neha* wherein the Supreme Court issued detailed guidelines for maintenance requiring asset disclosure by both the spouses, non-duplication in multiple proceedings and expeditious orders. As seen in the cases listed above Courts now routinely factor in earning potential, status, standard of living and needs of the children, all of which goes far beyond the literal statutory language. Judgements cited above have emphasized maintenance as a measure of social justice which is accessible to all regardless of their religion or status. Courts have time and again ensured fair maintenance even where statutes are silent on a particular issue.

Interpretation of section 27 of Hindu Marriage Act, 1955 by the courts have clarified that couples can decide on jointly gifted property at or about the time of marriage but the same principle does not extend to all matrimonial property. Courts have developed norms for just and proper division of such assets considering contributions and equity. The Supreme Court have time and again held that non-financial contributions such as domestic contributions must be taken into consideration while making maintenance decisions. Judicial activism has bridged gaps in legislative provisions, advancing women's right to property during subsistence and on the dissolution of marriage even where explicit legal provisions were ambiguous or silent.

The Indian judiciary does not literally frame legislative policy but through binding precedents and creative statutory interpretation fills gaps, set guidelines and directs equitable application of the laws. The judiciary has made law more accessible, fair and responsive to the realities of married life which in turn has resulted in improving rights for women and vulnerable spouse and has moved the nation towards modern notion of partnership and equality.

4. CONCLUSION

Hindus have always regarded marriage as a sacrament, "a tie which once tied cannot be untied". The Hindu notion of sacramental marriage varies from that of Christian marriage. For Hindus marriage is not merely a sacrosanct and inviolable union and an eternal union which subsist for all lives to come. In the words of Derrett, "the intention of a sacrament is to make the husband and wife one, physically and psychically, for secular and spiritual purposes, for the life and

after lives.”¹⁹⁵ The great Hindu sage Manu declared that, “the husband is declared to be one with wife. Neither by sale nor by repudiation is a wife released from her husband. Only once is a maiden given in marriage.”¹⁹⁶ A passage in *Rig Veda* reads as, “be thou mother of my heroic children, devoted to gods, be thou queen in thy father-in-law’s household. May all Gods unite the hearts of us two into one.”¹⁹⁷ According to Vedas, marriage is a union of “bones with bones, flesh with flesh and skin with skin, the husband and wife become as if they are one person.”¹⁹⁸

Among Hindus, “the wife is not just *patni* (wife) but *dharmapatni* (partner in performances of duties).¹⁹⁹ She is also called *ardhangini*, half of her husband.”²⁰⁰ According to the Vedas dharma should be practiced by man together with his wife.

Very rarely one comes across a text or two which mentions certain circumstances in which a wife can give up her husband. One such text is of Narada which states that, “Another husband is ordained for women in five calamities, namely, if the husband be unheard of, or be dead, or adopts another religion, or be impotent, or becomes an outcaste.”²⁰¹ Accordingly there are some texts as per which the husband can renounce his wife.²⁰²

Thus in the era of *Smriti* husband and wife were allowed to give up on each other in very exceptional circumstances. After the era of *Smriti* law became more rigid and marriage was regarded as an indissoluble union.²⁰³

Customary divorces were recognised in some caste and sub-castes.²⁰⁴ But customary divorce was a privilege only for lower caste, only in a very high castes customary divorce was allowed. In the latter half of 19th century divorce was introduced in India for two classes of persons namely, those who converted to Christianity and consequently their spouses refused to live with them and secondly for Christians.

¹⁹⁵ J. Ducan M. Derrett, *A Critique of Modern Hindu Law*, 287 (1950).

¹⁹⁶ Manu Smriti, IX, 48

¹⁹⁷ Rig Veda, IX, 85

¹⁹⁸ Shyama Charan Sarkar, *Vyavastha Chandrika*, 480

¹⁹⁹ See Manu Smriti, IX, 64-68

²⁰⁰ See Satapatha Brahma, V.I, 6.10

²⁰¹ Narda. XII, 93

²⁰² Manu Smriti, IX, 80

²⁰³ Pandurang Vaman Kane, *History of Dharamashasta*, 620 (1930).

²⁰⁴ Banerjee, Goorudas Law of Marriage and Stridhan, 242 (1st 1879).

Baroda was the first state to introduce divorce laws for Hindus. the law was basically influenced by the then English matrimonial law, and thus the Baroda Act, 1937 was based on Matrimonial Causes Act, 1937.

Many attempts were made at introducing divorce law at an all India level and a breakthrough was made when in 1944 the Hindu Law Reform Committee was constituted under the chairmanship of Sir Benegal Narsing Rau. Committee suggested a Uniformed Hindu Code applicable to all Hindus but it invoked opposition from the orthodox section of Hindus. Finally, between 1954 to 1956 separate bills were introduced covering five areas of Hindu Law, i.e., Marriage and Divorce, succession, adoption, maintenance, and minority and guardianship and thus were passed respective legislations.

Though the maintenance has been advocated in these legislations but their adequacy has time again questioned by legal fraternity particularly by academicians. The terms “alimony” and “maintenance” owes its origin in Indian law to English law. In case the husband neglected or refused to pay the wife a suitable allowance on their separation the wife could sue the husband. The refusal by husband was considered as an injury to the wife and it was redressed by assigning her a competent maintenance. The concept of maintenance emerged because in earlier English law, “by marriage, husband and wife are one in law, the very being of legal existence of wife is suspended or merged with the husband during marriage.” Since the wife had no independent personality, she was granted alimony on divorce, as she lacked any means. During this period concept of separate property of women evolved in English law. Then in 1857, the Matrimonial Causes Act, 1857 was enacted under which matrimonial courts began by making the decree of divorce conditional on the husband’s setting some property for the wife which shall be sufficient to produce enough income for her support. In 1886 next step was taken by enacting Matrimonial Cause Act, 1886, which empowered the court to pass orders on husband to pay a reasonable sum to wife weekly or monthly for her support and maintenance.

It has been observed earlier that a Hindu married woman is entitled to own property independently. Marriage does not affect her interest in the property. When Indian Divorce Act, 1869 was passed it was based on the then existing Matrimonial Causes Act. What our legislatures failed to consider was that in India property of the women was her separate property. Husband had no rights at all in her property, neither he could avail any benefit from her property without her consent. Therefore, extending the concept of maintenance to all the

women seeking divorce was never completely justified in India. A woman who has sufficient property in her own name should have been excluded from the women having insufficient means. Bracketing all of them together by the legislatures has created a vacuum which has been further left over for judicial scrutiny. Therefore, a positive right to claim maintenance has been conferred uniformly among all categories of women irrespective of their personal laws and also by a secular remedy under section 125 of Code of Criminal Procedure.

Thus there is a difference of opinion as to the manner and method of assessing maintenance under the various Acts. Every statute in India provides a different criterion for determining the quantum of maintenance. Even the judicial pronouncements are not uniform. A woman following Muslim faith may get lesser than what a women following Christian or a Hindu faith may get. In this regard, principles laid down under English Law may be found useful. Section 5(1) of the Matrimonial Proceeding and Property Act, 1970, in addition to specifying certain matters that must be taken into account provides that, “the court shall, giving regard to facts and circumstances of the case, exercise its power as to place the parties so far as practicable and having regard to their own conduct just to do so, in the financial position in which they would have been if the marriage had not broken down and each party had discharged his or her obligations.”

In the present twenty-first century woman’s contribute equally in the acquisition ‘family assets’. These assets acquired by the spouses during the marriage are known as the marital/spousal property. Our statutes lack the provision on Marital/Spousal Property. Parliament passed the Hindu Marriage Act, 1955, recognizing divorce, but the aspect of marital property did not seem to pose the problem to the legislature. Therefore, a simple provision in the form of Section 27 was enacted which provided for the adjustment of presents made “at or about the time of marriage” and which may belong jointly to both the husband and the wife. Perhaps, the reason for confining the concept of spousal property to the property given “at or about the time of marriage,” might be that the Indian women in 1950s were hardly engaged in any gainful employment. Even, the giving of higher education to the daughters at that time was considered to be luxury, or was “like another item in dowry.”²⁰⁵

An identical provision also exists in section 42 of Parsi Marriage and Divorce Act, 1936. In

²⁰⁵ Rama Mehta, “Divorced Hindu Women”. (1975), at p. 9.

Banoo Jal Daruwala v. Jal C. Daruwala,²⁰⁶ it was held that the matrimonial court constituted under the Act does not deal with the question of the titles to properties and questions arising between a husband and a wife as co-owner of properties except only in respect of joint properties presented at or about the time of marriage. Similarly in Nandini Sanjiv Ahuja v. Sanjiv Birsan Ahuja,²⁰⁷ the Bombay High Court held that section 42 empowers the court to make provisions with respect to property which may jointly belong to husband and wife and hence the subject matter of an order under this section would only be the joint property and nothing more.

Family Courts Act, 1984²⁰⁸ is another statute which makes a general provision for settlement of disputes relating to family matters between husband and wife including disputes with respect to the property of the parties or of either of them.²⁰⁹ It may be interesting to note that the Special Marriage Act 1954, which is a uniform civil code applicable to all the communities in India and provides for a civil marriage do not contain any provision in this respect. The probable reason seems to be that a civil marriage was thought to be a love marriage as opposed to arranged marriage and no dowry was expected.

Judiciary too differ in its approach from case to case as in Krishna v. Padma²¹⁰ the Mysore High Court held that the property which is not presented to spouses at or about the time of marriage, is outside the purview of section 27 of Hindu Marriage Act, 1955. Whereas the Allahabad High Court in Kanta Prasad v. Omwati²¹¹ took the view that the section does not exclude the inherent power of the Court to pass a decree with respect to the separate property of the husband and the wife. The Court drew this power from Section 21 of Hindu Marriage Act, 1955 which stated that all powers of a civil court available when deciding cases under it. Again a contrary view was expressed by Delhi High Court²¹² and Bombay High Court.²¹³ But in Sangeeta Balkrishna Kadam v. Balkrishna Ramchandra Kadam²¹⁴ the wife claimed, among other things, jewelry, furniture and household gadgets purchased with her earnings and asked for their return under section 27. The Bombay High Court exercising its inherent powers

²⁰⁶ AIR 1964 Bom. 124.

²⁰⁷ AIR 1988 Bom. 239.

²⁰⁸ No. 66 of 1984.

²⁰⁹ Section 7 (I) Exp. (c) of Family Courts Act 1984

²¹⁰ AIR 1968 Mys. 226.

²¹¹ AIR 1972 All. 153.

²¹² *Shukla v. Brij Bhushan*, AIR 1982 Delhi 223.

²¹³ *Badri Prasad v. Sanjiv*, AIR 1988 Bom. 239 and *Shakuntala v. Mahesh*, AIR 1989 Bom. 353.

²¹⁴ AIR 1994 Bom. 1.

ordered the return of these items even though the articles were not strictly within the scope of the section. But it would be far-fetched to interpret the inherent powers as conferring a power to adjust the properties belonging to the husband and the wife.

Thus Indian legal system has always treated property acquired during marriage as individually owned and there is no common matrimonial property regime is formally recognised. As discussed in chapter 2 Indian legal system primarily follows a separate property regime in marriage, meaning whether it be before the marriage or during its subsistence each spouse retains exclusive ownership over property acquired in their own name. there is no formal recognition of a joint or community matrimonial property system unlike UK and USA. Property whether movable or immovable, acquired by the individual spouse during marriage remains his/her absolute property unless specifically registered as jointly owned. Marriage itself does not create a presumption of joint ownership, nor an automatic right to a share in other spouse's property.²¹⁵²¹⁶²¹⁷ The only statutory provision for matrimonial property i.e. section 27 of Hindu Marriage Act, 1955 focuses narrowly on "property presented at or about the time of marriage which may belong jointly to both husband and wife." This heavily restricts the judicial mandate to only property gifted to the couple during the wedding which leaves out property amassed separately or jointly during the marriage outside the judicial preview.²¹⁸²¹⁹ The consequences of which are that in the event of divorce or separation the property division depends on who holds the legal title and clear evidence of joint acquisition. Non-tilted spouse has a very limited or in most of the cases no legal claim over the assets in the name of the other spouse irrespective of their non-financial contributions including their role as a homemaker.²²⁰

Earlier the role of women was confined to the four walls of house-hold. Thus wife could not contribute directly to the family pool. Hence, on divorce, the question of division of family assets' acquired during marriage simply did not arise. At any rate, her contribution towards the welfare of the family and rearing of children was compensated through the award of matrimonial maintenance. Moreover, since matrimonial remedies under the Hindu Marriage Act were modelled on the basis of contemporary English Matrimonial Causes Act, 1950, which

²¹⁵ Arundati kataju, "Because Jack did not build his own house alone: the right to tell matrimonial home as a property right", 15 *National Law School of India Review* Iss.1, Article 3, 2003.

²¹⁶ Kunal Parihart, "Silent Laws, Unheard Voices: The Matrimonial Property under Hindu Law", *SCC online*.

²¹⁷ Jhuma Sen, "Matrimonial Property Rights: Is India Ready Supra 208 for A Law", 1 *Journal of Indian Law and Society*, 2009.

²¹⁸ *Supra* note 217.

²¹⁹ *Supra* note 215.

²²⁰ *Supra* note 216.

itself was wanting in terms of the concept of spousal property, therefore, there did not seem to be much occasion for anticipating the problems of twenty first Century in terms of settlement of property acquired during the subsistence of marriage.

It is clear that Indian law does not treat marriage as an economic partnership that would entitle both the spouses to an equal share in assets acquired during the marriage which has a disproportionate impact on the homemakers, which are often wives, who may contribute without having their economic role legally recognised.²²¹ A limited alternative protection in the name of maintenance and right to residence is provided which is very different from sharing or awarding property rights. While one spouse may be required to pay alimony or maintenance under different statutes the right to residence given under The Protection of women from Domestic Violence Act, 2005 grants a limited right to residence for wives in the shared household without giving any ownership to the property.²²² Thus there is no overarching legal entitlement to spouse's property on the account of marriage alone which leaves the non-owning spouse vulnerable after marital breakdown.

As far as Indian courts are concerned they generally prioritize property title and financial contributions in matrimonial property disputes, but are increasingly recognizing non-titled and non-financial contributions by spouses—albeit inconsistently and largely for maintenance, not ownership wherein Title and Financial Contribution as Primary Factors. Courts typically look first at the legal title of the property. If the property is in the name of one spouse, that spouse is presumed to be the owner. The non-titled spouse must prove financial contribution to claim an interest in the property.²²³ The onus is on the non-titled spouse to show, with concrete evidence, any monetary contribution towards acquisition or improvement (e.g., bank transfers, receipts).²²⁴ If proven, courts may award a share proportional to the financial input, not automatic equal division.²²⁵

Traditionally, Indian courts have not recognized housework, childcare, or other indirect contributions as grounds for property division.²²⁶ However, there is a slowly emerging judicial

²²¹ *Supra* note 415.

²²² Raizada Law Associates, *Divorce and Property Settlement in India: A Comprehensive Legal Overview*, 2025.

²²³ Kunwar Abhijeet, “*Division of Matrimonial Property after Divorce*”, Pleadings by Law Sikho, 2021.

²²⁴ Joint Property after Divorce: A Complete Guide for Indian Couples, LegalKart.com, last seen 14 September 2025.

²²⁵ Can Husband Claim Wife's Property During Divorce in India, restthecase.com, last seen on 14 September 2025.

²²⁶ *Supra* note 502.

trend that acknowledges such contributions, mostly in broad financial settlements like maintenance or residence rights, not actual property ownership.²²⁷ In some cases, courts have considered homemaking and support for the spouse's career while deciding compensation or maintenance, especially when it affects custody or the welfare of minor children.²²⁸ Still, there is no consistent or codified legal obligation to assign property rights based on these non-financial contributions.²²⁹

In *Sri Arun Das v. Smt. Aparna Das*²³⁰, despite joint title, the court awarded sole ownership to the spouse who made the entire financial contribution, treating the non-contributing spouse as a trustee.²³¹ Also in *Debika Chakraborty v. Pradip Chakraborty*²³², if the property was titled in one spouse's name but financial proof showed the funds came from the other, courts recognized equitable interest, but the burden again lay with the claimant.²³³ Maintenance awards and residence rights (under Protection of Women from Domestic Violence Act) sometimes reflect non-financial contributions, but this does not translate to property rights.²³⁴

Recent Supreme Court of India rulings have begun to gradually shift the approach toward recognizing the contributions of non-titled spouses, but most progress has been in maintenance and alimony, not in conferring direct property ownership. The Apex Court continues to uphold the principle that the self-acquired property of a spouse remains their own unless there is clear proof of joint ownership or direct financial contribution by the other spouse.²³⁵ In *B. P. Achala Anand v. S. Appi Reddy*²³⁶, the Court reiterated that title and traceable contribution are required for a spouse to claim an interest in the other's property.²³⁷

Recent decisions increasingly link maintenance awards and orders for transfer of property or redemption of mortgage to the standard of living enjoyed during marriage and the long-term security of the economically weaker spouse. For instance, the Supreme Court ordered the

²²⁷ Does a Wife Automatically Get a Half of the Husband's Property After Divorce in India?, xpertslegal.com, last seen on 14 September 2025.

²²⁸ Shubhankar Krishnan, "Navigating Divorce and Asset Division Between Husband and Wife," vaquil.com, last seen on 12 September 2025.

²²⁹ *Supra* note 215.

²³⁰ *Sri Arun v. Smt. Aparna Das*, AIR ONLINE 2021 TRI 115.

²³¹ *Supra* note 216.

²³² *Debika Chakraborty v. Pradip Chakraborty*, AIR 2017 Calcutta 11.

²³³ *Supra* note 502.

²³⁴ *Supra* note 500.

²³⁵ *Supra* note 501.

²³⁶ *B. P. Achala Anand v. S. Appi Reddy* (2005) 3 SCC 313.

²³⁷ *Supra* note 217.

husband to transfer the title deed to his ex-wife and pay increased permanent alimony, thus effectively using ownership changes as a tool for spousal welfare.²³⁸

Although statutory law still lacks formal acknowledgment, recent Supreme Court observations emphasize the need to reflect non-financial marital contributions in settlements—particularly maintenance and residence rights.²³⁹ The Court has stressed that homemaking and childcare are vital components in matrimonial partnerships and should impact the determination of maintenance and alimony, if not property division.^{240,241}

There is an Incremental Expansion but the approach remains rooted in title and financial input, but recent landmark judgments highlight a more expansive view of spousal contributions, especially in long marriages or where economic disparity exists after separation.²⁴² Direct conversion of non-titled contributions into property ownership is rare but the Court is more willing to order remedies (such as transfer or redemption of property) linked to fairness, security, and maintaining the marital standard of living post-divorce.²⁴³ Thus there is a discernible shift in Supreme Court jurisprudence toward valuing non-financial contributions via more generous maintenance and residence rights, and occasional property transfer orders—but no systemic overhaul establishing non-titled spousal property rights yet. Indian law is evolving, and future reforms may further bridge the gap between contribution and property entitlement for non-titled spouses.²⁴⁴

²³⁸ Neelanjit Das, “Divorced but not re-married wife to get husband’s property and Rs. 50000 per month permanent alimony with 5% increase every 2 years, rules Supreme Court, *The Economic Times Online*, last seen 12 September 2025.

²³⁹ *Supra* note 215.

²⁴⁰ *Ibid.*

²⁴¹ *Supra* note 215.

²⁴² *Ibid.*

²⁴³ *Supra* note 217.

²⁴⁴ *Supra* note 216.