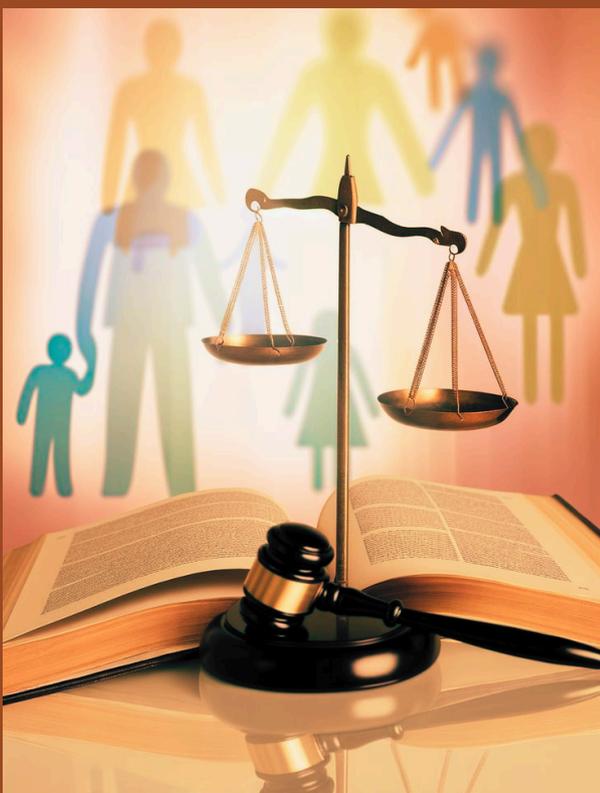




AIL CENTRE FOR PERSONAL LAWS NEWSLETTER



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About The Centre

● MEET THE TEAM

Introduction:

The AIL Centre for Personal Laws (ACPL) is an initiative established to advance research in the field of personal laws. Recognizing the complexity of personal laws that govern marriage, divorce, inheritance, and family relations across diverse communities, the Centre aims to foster a deeper understanding of this critical legal framework. The Centre recognises the paramount importance of understanding and developing personal laws in a nation characterized by remarkable cultural and religious diversity and has been established to foster research in the field of personal laws in India.

Through ACPL, we seek to create a vibrant platform for inquiry and discourse, encouraging collaboration among students, scholars, legal practitioners, and community leaders.



The Team:

Row - 1(Left to Right)

Rebecca Kanwar,
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Sourav Singh
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Other Members

Shagun Sharma
Amishi Shukla
Khushita Garg

Events by the Centre

● SESSIONS AND EVENTS CONDUCTED

Just a Minute: A Picturesque

The AIL Centre for Personal Law successfully organized the event “Just a Minute: A Picturesque” on 24th September 2024. This engaging and fast-paced competition encouraged participants to think quickly and creatively, presenting their ideas on a given picture within just one minute. The event aimed to foster spontaneity, articulation, and critical thinking, making it an exciting experience for both the participants and the audience.



ACPL Research Marathon

The AIL Centre for Personal Laws (ACPL) successfully conducted the Research Marathon, from 9th to 12th November, 2024, an intense, intellectually stimulating competition designed to test students' research skills, creativity, and time management under pressure. The event saw enthusiastic participation and showcased the research capabilities of AIL's students.

Group Discussion on Right to Marry



The AIL Centre for Personal Law (ACPL) successfully organized a Group Discussion on the “Right to Marry” on 25 February 2025 at 2:30 PM. The event aimed to facilitate an open and insightful dialogue on the legal, constitutional, and societal dimensions of the right to marry in India.

RECENT JUDICIAL PERSPECTIVES

WHEN MARRIAGE SILENCES CONSENT

• A Comparative Study of Blind Spots in India and France

• Anushka Verma (2254)*

Marital rape, defined as non-consensual intercourse by a spouse, exists in a murky legal space across the world. The case of Gisele Pelicot in France casts a stark light on this issue, offering a lens to critique India's approach within family law.¹

The Case of Gisele Pelicot

Gisele Pelicot, a 72-year-old Frenchwoman, survived nearly a decade of sexual abuse by her husband, Dominique Pelicot, who drugged her unconscious, enabling himself and approximately 50 others to assault her. The truth emerged after Dominique's arrest for unrelated offenses. Of the 50 accused, 25 were convicted, with Dominique sentenced to 20 years in prison.²

Gisele's courage in waiving anonymity and requesting a public trial, challenged societal silence, declaring, "Shame must change sides."

France's Legal Stand

France criminalizes marital rape, recognizing it as a violation of individual autonomy and bodily integrity. The legal system does not differentiate between rape by a spouse and rape by any other individual; both are prosecutable

India's Legal Void

Offenses carrying severe penalties. Gisele's case underscores the effectiveness of this legal stance, as the perpetrators were held accountable under the law, reflecting a societal acknowledgment of the gravity of such crimes.³

In contrast, Indian law maintains an exception for marital rape under Section 375 of the Indian Penal Code (IPC). This section defines rape but includes an exception stating that sexual intercourse by a man with his own wife, provided she is not under 18 years of age, does not constitute rape. This legal position has been a subject of intense debate and criticism, with advocates arguing that it violates women's rights to bodily autonomy and dignity. In India, there is no penalization for marital rape; instead, legal recourse for victims is limited to separation, divorce, or financial compensation such as alimony and maintenance. These remedies are granted not as punishment for the perpetrator but as support for the dependent woman following separation.⁴ This legal framework fails to address the core issue — that consent is non-negotiable, and the absence of it within marriage constitutes a severe violation of human rights.⁵

The National Family Health Survey (2019-21) found that 30% of married women in India experienced spousal violence, reflecting the troubling normalization of such abuse. Several high-profile Indian cases have spotlighted this issue.

In *RIT Foundation v. Union of India* (2015), the Delhi High Court upheld the marital rape exception, citing potential misuse. Similarly, in *Independent Thought v. Union of India* (2017), the Supreme Court criminalized getting intimate with wives under 18, but upheld the exemption for adult women, signaling partial progress but leaving the broader issue unresolved.⁶

Despite public outcry, the judiciary deferred to the legislature, reflecting hesitation to redefine marital norms.

Comparative Lens

France equates marital rape with any other rape, reinforcing equality and justice. India, by contrast, upholds an outdated view of marriage, prioritizing its sanctity over individual rights. The notion that "No means No" is disregarded, permitting violations under the guise of marital bonds. Marital rape isn't just a breach of consent—it's an indictment of a legal system that chooses silence over accountability.

Protecting the innocent outweighs potential misuse of laws. Courts exist to ensure fair trials; legislatures to create protective frameworks. Failing to address marital rape contradicts the essence of justice.

As Justice J.S. Verma aptly stated, "A woman's autonomy and dignity cannot be subsumed by marriage." His 2013 report called for the removal of the marital rape exception, yet the law remains unchanged.⁷

Conclusion

The case of Gisele Pelicot serves as a poignant reminder of the pervasive issue of marital rape and the critical

The role of legal systems in addressing violations of bodily autonomy and dignity is crucial in shaping a just society. In the case of France, the legal framework acknowledged Gisele's trauma and delivered justice, reinforcing the idea that marriage does not nullify a woman's right to bodily integrity. This approach reflects a progressive understanding of individual rights, recognizing that consent must remain central within all relationships, including marriage. It demonstrates how a nation's legal response can serve not only to protect individuals but also to signal a broader societal shift toward equality and human rights. France's recognition of marital rape as a punishable offense sends a strong message: that violence within the institution of marriage will not be tolerated or excused.⁸

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PERSONAL LAWS IN THE MODERN WORLD

The Supreme Court's landmark decision in *Anjum Kadari v. State of Uttar Pradesh* illustrates the delicate balance between preserving cultural traditions and meeting the demands of modern governance. At the heart of the case was the Uttar Pradesh Board of Madarsa Education Act, 2004, which sought to bring registered madrasas under a structured regulatory framework. This case highlights the judiciary's role in navigating the intersection of personal laws, constitutional rights, and the state's regulatory obligations.¹

Background

Madrasas play a dual role in Muslim communities, serving as institutions of faith and education. However, concerns about their educational standards and alignment with national policy have often sparked debates. The Uttar Pradesh Act aimed to standardize the curriculum, provide quality oversight, and align madrasas with broader educational goals while preserving their cultural essence. This intent faced resistance, culminating in the Allahabad High Court declaring the Act unconstitutional in 2024. The Court deemed it "unsecular," arguing it created a distinct educational framework based on religion.

The National Commission for Protection of Child Rights (NCPCR) had initiated litigation, citing Article 21A of the Constitution, which guarantees the right to education for children aged 6–14. The Commission argued that substandard education in madrasas violated this right.

The Supreme Court, in its November 2024 judgment, reversed the High Court's ruling, upholding most provisions of the Act while striking down those related to higher education, such as Fazil and Kamil examinations.

Legal Issues

The case revolved around three key issues:

- **Religious Autonomy under Article 30:** The constitutional right of minorities to establish and administer educational institutions was weighed against the state's right to regulate education.²
- **Right to Education under Article 21A:** The exclusion of madrasas from the purview of the Right to Education Act posed a challenge in ensuring quality education while respecting cultural diversity.
- **Legislative Competence:** The Court examined whether the Uttar Pradesh Act encroached upon matters reserved for the University Grants Commission Act, 1956, which governs higher education.

Supreme Court's Judgment

The Supreme Court upheld the constitutional validity of the Act, recognizing its intent to integrate quality standards in madrasas while preserving their autonomy.

It clarified that the exclusion of madrasas from the RTE Act does not undermine their educational role but underscores the need for tailored frameworks. The provisions related to Fazil and Kamil degrees were invalidated on the grounds of legislative incompetence.

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BREAKING BARRIERS: THE RIGHTS OF CHILDREN BORN OUT OF WEDLOCK

• Vidushi Kalyan

"There are no illegitimate children- only illegitimate parents"
-Leam. R. Yankiwich

Whether an individual is married or not, the status of his/her relationship has a huge impact on children's life including effects on their all-round development. In all societies across the world, the status of a child, whether it is born legitimate or illegitimate has great consequences. Both in the contemporary as well as the historical societies, there is a classification of children as legitimate and illegitimate.¹

The status of illegitimate child has been a subject of considerable socio-legal discourse in India. The rights they confer, the power they hold and the responsibilities they bear, all proceed from their place in society but, being different is usually associated with difficulties, lack of societal acceptance, discord, discrimination, etc., unlike the legitimate children who enjoy a proper position in society. Understanding the rights & challenges faced by these children is crucial for fostering a more equitable society.

MEANING OF ILLEGITIMACY

Illegitimacy as defined by the Oxford dictionary means "(of a child) born of parents not lawfully married to each other."²

This means when the parents of a child are not lawfully wedded, the child will be considered illegitimate.

Premarital sexual relationships & extramarital sexual relationships are considered to be a sin in almost all the societies. So, the resulting child of such offensive relationships is also kept in a state of sin. Such a child is considered illegitimate for his entire life.

Many religions also view premarital or extramarital sexual relations as an offensive relationship almost all the personal laws in India are religion-based and so even under law, the children born out of such offensive relationship are not given equal status compared to children borne out of a lawful wedlock.

In Medieval Wales, a "bastard" was defined simply as a child not acknowledged by its father. All children, whether born in or out of wedlock, which were acknowledged by their father, enjoyed the same legal rights, including the right to share in father's estate. Under English law, a Bastard could not be an heir to real property. There was one exception however, it was when his father married his mother.³

Legitimacy refers to the legal and societal recognition of a child's status as born within lawful wedlock, granting the child rights such as inheritance and social acceptance. In legal terms, it denotes the status of a child conceived or born to parents who are lawfully married to each other. The concept of legitimacy holds crucial significance in matters of personal law, affecting a child's civil rights and societal position. While modern legal systems have increasingly moved toward protecting the rights of all children irrespective of their birth circumstances, legitimacy still plays a vital role in determining parental responsibilities, inheritance, and identity.

WHAT IS LEGITIMACY OF A CHILD?

Legitimacy refers to the status of a child born to parents who are legally married to each other at the time of the child's birth. A legitimate child is one whose birth is recognized by law as being within a lawful marriage thereby granting the child certain rights and privileges including inheritance rights, legal protection and social recognition.

ILLEGITIMATE CHILD

In a world where love stories unfold in various shades, there existed a special category of children known as illegitimate children. These children often born outside the bonds of marriage carried with them a unique narrative filled with challenges, resilience, dishonour and the quest for acceptance. In many cultures, the term "illegitimate" carries heavy burden. It often conjures images of stigma and social ostracism. The child, despite being a bundle of joy, faces questions about their worth & place in society. "Who am I?" they might wonder, "Do I belong here?" are just a few questions that pop into their minds.⁴

GLOBAL LANDSCAPE

Internationally, the rights of illegitimate children have gained recognition through various treaties and conventions:

Convention on the Rights of the Child (CRC): Adopted by the United Nations in 1989, the CRC emphasizes that all children, regardless of their birth status, have the right to protection, care, and support. Article 2 of the Universal Declaration of Human Rights provides that "all children, whether they are born in or out of wedlock, shall enjoy the same social protection."

This approach has subsequently been endorsed in the Declaration on the Rights of the Child, the International Human Rights Covenants. European Convention on Human Rights (ECHR): The ECHR has addressed the rights of illegitimate children, emphasizing that they should not be discriminated against in matters of inheritance and family law.

Inter-American Convention on the Rights of the Child: This convention also recognizes the rights of all children, including those born out of wedlock, ensuring their protection and welfare.

ILLEGITIMACY AND THE CONSTITUTIONAL CHALLENGE

The jurisprudence that has evolved in the United States is centred around the notion that illegitimacy, like other discriminatory markers like race or gender is something which the individual cannot control and it in no way affects their contribution towards society. Additionally, another line of reasoning that has found favour with courts is that illegitimacy imposes vicarious liability upon children for something beyond their control. Thus, children being innocent cannot be penalised for the "sins" committed by their parents.⁵

The equal protection logic (or the doctrine of legitimate classification) must also be extended to bring equality between different intimate relationships pursued in the private sphere. This is also supported by jurisprudence relating to the right to privacy. This includes the right to make fundamental decisions about one's personal life without penalisation. Decisions relating to marriage and family life fall within this "private space" and only a compelling "state interest" and not the enforcement of "public morality" can justify interference.

In light of the critique of marriage articulated by feminist theorists, the absence of a definite link between marriage and social policy objectives and the lack of evidence of any serious harm caused by such relationships, the distinction between legitimates and illegitimates is arbitrary and

unreasonable and thus liable to be struck down under Art. 14 of the Constitution.

LEGAL STATUS OF AN ILLEGITIMATE CHILD

At the common law, an illegitimate child was a filius nullius, having no legal relationship with the father, mother or any relatives. Thus, the child had no right to maintenance, succession or to any other benefits derived from the relationship between a parent and child. Illegitimate children were also barred from occupying positions of responsibility and social visibility. In the present day, a majority of the glaring legal disabilities facing illegitimate children have been abandoned in most common law jurisdictions such as Australia, the United States, and the United Kingdom. However, the status of illegitimate children in India remains a throwback of medieval times.⁶

In India, illegitimate children are severely disabled under all systems of personal law. Under Hindu law, by virtue of the Hindu Succession Act, 1956, an illegitimate child has the right to succeed to the property of only his/her mother since they are deemed to be related to their mother. The relationship of the child with the father is not recognised. Section 16 of the Hindu Marriage Act, 1956, was inserted by an amendment in 1976 to protect the rights of children born out of void and voidable marriages.

ILLEGITIMACY & LEGITIMACY OF A CHILD ACCORDING TO HINDU LAW

A marriage is considered valid under Hindu law if it meets all the conditions son is only limited to

maintenance set out in Section 5 and 7 of the Hindu Marriage Act, 1955. Children born from such marriages are legitimate, though the marriage itself may be void under Sections 11 and 12 of the Act if the conditions of Section 5 are not met.

Annulled marriages under Section 11 of Hindu Marriage Act, 1955 can be called invalid marriages. The provision states that a marriage is void if it violates any of the conditions set forth in Section 5 and children born from such marriages are considered illegitimate.

Under Section 12 of the Hindu Marriage Act, 1955 certain grounds have to be satisfied to be deemed an invalid marriage. If a marriage is declared void for any of reasons as laid down section 12, the children born of such shall be considered illegitimate.

Additionally, if proper ceremonies are not performed at the time of marriage as per section 7 of Hindu Marriage Act, 1955 the resulting marriage will not be valid. Children borne of such marriages also fall under the category of illegitimate children.⁷

Therefore, a child who falls under Hindu Law as an illegitimate child can be summarized as follows –

- Child born of an invalid marriage
- Child borne out of an illicit relationship
- Child borne of concubines
- A child born out of an invalid marriage due to lack of proper ceremonies.

RIGHTS OF AN ILLEGITIMATE CHILD DURING ANCIENT TIMES

Before, the Personal laws of Hindus were codified the old law of Mitakshara and Dayabhaga governed each and every aspect of Hindu Personal issues.

The old law recognized –

- Maintenance rights
- Inheritance

- Joint Family Property and Partition
- Guardianship

Maintenance

Prior to the coming into force of the Hindu Adoptions and Maintenance Act, 1956, an illegitimate son of a Hindu was entitled to maintenance out of His father's coparcenary property and he himself, acquired a portion of the property. The father was bound to maintain His illegitimate son during the period minority, irrespective of the fact whether he had any property or not and even the illegitimate daughters had formerly no remedy under Hindu law.

Inheritance

An illegitimate child is not entitled to succeed His father. But under Hindu Succession Act, 1956, illegitimate children are deemed to be related by illegitimate kinship to their mother and, their legitimate descendants are deemed to be related by legitimate kinship to them and one another. Therefore, they can inherit from each other under the said Act. An illegitimate child can inherit property of his or her mother or of his or her illegitimate brothers or sister. A mother can also inherit the property of her illegitimate child.

Joint Family Property and Partition

Unlike a legitimate son, an illegitimate son does not acquire any interest in ancestral property in the hands of his father, nor does he form a coparcenary with him so, during the lifetime of his father, the right of the illegitimate

property, which may be a share equal to that of legitimate sons.

Guardianship

A mother has a preferential right of guardianship in generally, all cases. The mother is considered, the natural guardian of an illegitimate child. The father had no right to custody of an illegitimate child. In Dharmesh Vasantraishah v. Renuka Prakash Tiwari, the court reiterated that mother is the natural guardian of an illegitimate child and father can only claim guardianship after the mother, further solidifying the mother's role in the child's life.⁸

RIGHTS OF AN ILLEGITIMATE CHILD IN THE PRESENT SCENARIO

Hindu Law

Maintenance

Post-codification in accordance with the Hindu Adoptions and Maintenance Act, 1956, a Hindu is bound during his or her lifetime, to maintain his or Her illegitimate Children. The obligation to maintain illegitimate children is now upon both, the father as well as the mother. Not only the illegitimate son, but also illegitimate daughter, is entitled to be maintained by her father and her mother.

Inheritance

An illegitimate child is not entitled to succeed to his father but under Hindu Succession Act, 1956, illegitimate children are deemed to be related by legitimate kinship to their mother. An illegitimate child can inherit the Property of his or her mother or of, his or her legitimate brother or sister (uterine blood).

Joint Family Property & Partition

Prior to the Hindu Succession Act, 1956, on the death of His father, an illegitimate son succeeded to his estate as a coparcener along with the legitimate sons of His father. Now, under the Act, however, he cannot succeed His father, as he is not related to Him by legitimate kinship.

In Revanasiddappa & Ors. v. Mallikarjuna

& Ors., the Supreme Court ruled that illegitimate children have rights to both self-acquired and ancestral property of their parents, thereby affirming their inheritance rights.

Guardianship

The mother is considered the Natural Guardian. Now, if both the parents or one of the parents of an illegitimate child is a Hindu, Buddhist, Jain or Sikh by religion and such a child is brought up as a member of tribe community to which such parents belong, then Hindu Minority Guardianship Act, 1956 applies. If such a guardian had ceased to be Hindu or renounced the world then he is not entitled under this Act.

Muslim Law

In Muslim law, illegitimate children also have inheritance rights, but their share is usually less than that of legitimate children. According to Islamic inheritance rules, children, including those born out of wedlock, can inherit from their mother and father. Aatish Ali Tasser's Case highlighted the guardianship rights of mothers over their illegitimate children under Muslim Personal Laws. However, religious guidelines fix the share of an illegitimate child, and it is generally smaller compared to the share of legitimate children. Yet, they are only partially excluded from inheriting.

Christian Law

Under the Indian Succession Act, 1925, illegitimate children have the same inheritance rights as legitimate children. They can inherit both their father's and mother's property.

This law ensures that children born out of wedlock are treated fairly and equally when it comes to inheriting property, especially if their parents die without leaving a will.

HOW INDIVIDUALS CAN HANDLE THE SITUATION

To navigate the challenges associated with being an illegitimate child, it's crucial to approach the situation with both empathy and legal guidance. Here's how individuals can ensure their rights are protected:

- **Legal Awareness:** Raise awareness about your rights and seek legal counsel to understand your entitlements.
- **Proper Documentation:** Ensure that the child's birth and parentage are documented appropriately to support legal claims.
- **Seek Legal Advice:** Consult with a lawyer to better understand your rights and pursue maintenance or inheritance claims.
- **File for Maintenance:** If you are denied support, seek to file a petition under Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023, for maintenance.⁹

STEPS FOR ILLEGITIMATE CHILDREN TO SECURE THEIR RIGHTS

If an illegitimate child is facing any challenges in asserting his rights, there are several steps he can take to protect his legal entitlements –

Gather Evidence: Collect documents such as birth certificates, school records, or any proof of parentage. These documents are crucial in asserting his rights, especially in legal matters involving inheritance or maintenance.

Consult a Lawyer: Consulting a lawyer who specialises in family law can provide valuable insights into his rights and guide him through the legal system. A lawyer can help him file for maintenance or inheritance rights and represent him in legal proceedings.

File for Maintenance: If maintenance from his parents is denied, he can file a petition under Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023, to secure his basic needs. This is a vital step to ensure that you receive the support you are entitled to.

Pursue Legal Action for Inheritance: If one is entitled to inherit property but face obstacles, he can pursue legal action to claim his inheritance. A lawyer will assist him in navigating the complex legal process of inheritance. The Narayan Datt Tiwari Case serves as a landmark Judgement in Indian Family law, emphasizing the importance of recognizing the rights of illegitimate children.

CONCLUSION

Thus, it can be concluded that personal laws applicable to parents of illegitimate children plays very important role while deciding rights of inheritance, maintenance, guardianship. It is also important to note that personal laws don't have uniformity over these subject matters, somewhere some rights have been recognised and in other places, they are denied due to religious beliefs and personal laws of the parents.

Illegitimate children have a tarnished image in the society due to social stigma and they are also subjected to victimhood without having any fault in the matter.

Since there is no legal framework which could save the interest and rights of such children and to remove discrimination against them, Supreme Court has tried to safeguard their interests. However, with the changing social structures, existing laws need to be revised for bringing uniformity and protecting the interest of illegitimate children across religions. The rights of illegitimate children are not just legal entitlements; they are fundamental human rights that reflect our collective values of fairness and justice.

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MAINTENANCE UNDER PERSONAL LAWS: A LEGAL IMPERATIVE FOR EQUITY AND SOCIAL JUSTICE

• Khushita Garg*

INTRODUCTION

Maintenance, often synonymous with spousal support or alimony, is a crucial aspect of family law that ensures financial stability for a spouse or dependent after the dissolution of marriage. Traditionally, alimony was regarded as the husband's obligation to support the wife, but legal advancements, such as the U.S. Supreme Court ruling in *Orr v. Orr*, have established gender neutrality in awarding spousal maintenance. The concept of maintenance is not new—it has deep historical and cultural roots. Manu declared: "the aged parents, a virtuous wife and an infant child must be maintained even by doing hundred misdeeds." Brihaspati said, "A man may give what remains after the food and clothing of family: the giver or more (who leaves his family naked and unfed) may taste honey at first but afterwards finds it poison."¹

DEFINITION OF MAINTENANCE

In Hindu law, the term "maintenance" has a broad connotation. Hindu Adoptions and Maintenance Act, 1956, defines maintenance as 'provision for food, clothing, residence, education and medical attendance and treatment.'

In the case of an unmarried daughter, it includes reasonable expenses of her marriage. The general meaning of maintenance refers to support or sustenance. The term itself is not explicitly defined in the marriage laws of any religious community.²

MAINTENANCE UNDER DIFFERENT LAWS IN INDIA

Maintenance Under Hindu laws

Maintenance under Hindu law is governed by the Hindu Adoption and Maintenance Act, 1956 and other statutes such as the Hindu Marriage Act, 1955. Maintenance is regarded as an ancillary relief, granted only when sought alongside a primary relief such as divorce, restitution of conjugal rights, or judicial separation. The obligation to maintain arises out of personal relationships and is enforceable through legal mechanisms.³

Maintenance of Wife

The obligation of the husband to maintain his wife does not arise out of any contract, express or implied, but out of the status of marriage, out of the jural relationship of husband and wife created by the performance of the marriage. Under Section 24 of the Hindu Marriage Act, 1955 either spouse can seek interim maintenance if they lack independent income for their sustenance. The Act does not prescribe a fixed quantum for maintenance, leaving it to the discretion of the court.⁴

Additionally, maintenance pendente lite covers the claimant's litigation expenses, which must be borne by the other spouse. Interim maintenance is granted from the date of filing the petition until the suit is dismissed or a decree is passed, aiming to meet the immediate needs of the petitioner. While provisions for permanent maintenance exist across various personal laws, their specific grounds and conditions may differ.⁵

Grounds for Granting Maintenance:-

Maintenance is awarded only when the wife establishes at least one of the following grounds provided under Section 18(2) of the Hindu Adoptions and Maintenance Act, 1956-

- a) The husband has deserted or wilfully neglected her.
- b) The husband has treated her with cruelty.
- c) The husband suffers from a virulent form of leprosy, a venereal disease, or another infectious illness.
- d) The husband has another wife living.
- e) The husband cohabits with a concubine in the marital home or resides with her elsewhere.
- f) The husband has ceased to be a Hindu by conversion to another religion.
- g) Any other reasonable cause justifying separate living.

Quantum of Maintenance

The court determines the quantum of maintenance based on the financial capacity and earning potential of the person liable to pay. Courts take into account disposable income rather than gross earnings.⁶ Section 23(2) of the Hindu Adoptions and Maintenance Act, 1956 Act outlines factors influencing maintenance amounts, including the position and status of the parties, the reasonable needs of the claimant, justification for

claimant's separate living, the claimant's income and assets and the number of dependents entitled to maintenance.

In *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*, the Supreme Court observed that, while interim maintenance orders are generally not subject to interference, an exception can be made based on the social and financial status of the parties. Consequently, the maintenance awarded to the wife was increased from ₹700 per month to ₹1,500 per month. Similarly, in *Kiran Bala Saha v. Bankim Chandra Saha*, the court examined the reasonable needs of the wife, including expenses for food, clothing, residence, and medical care. After assessing these factors, the court determined that ₹75 per month would be sufficient to meet her essential requirements, despite her claim for ₹200 per month.

However, a wife loses the right to maintenance if she engages in adultery or converts to another religion, thereby ceasing to be a Hindu.⁷

Maintenance of Children

Section 20 of the Hindu Adoptions and Maintenance Act, 1956, imposes an equal obligation on both parents - mother and father - to maintain their children,^[1] whether legitimate or illegitimate. This provision is a distinctive feature of Hindu law, ensuring that both parents share the responsibility of child maintenance. According to Section 20(2) of the Hindu Adoptions And Maintenance Act, 1956, children are entitled to maintenance until they attain majority. However, in the case of a daughter, this right extends until her marriage, with the parents also being obligated to bear her marriage expenses. Additionally, if a minor married daughter is unable to sustain herself after marriage she may seek maintenance under section 125 of

s the Code of Criminal Procedure, 1973 (CrPC). Section 26 of the Hindu Marriage Act further empowers the court to issue interim orders concerning the custody, maintenance, and education of minor children during any legal proceedings under the Act.⁸

Maintenance of Parents

Section 20 of the Hindu Adoptions and Maintenance Act, 1956, imposes a legal obligation on children to provide maintenance to their aged and infirm parents who are unable to support themselves from their own earnings or property. This Act is the first statute in India that expressly mandates children, including both sons and daughters, to maintain their parents. The right to claim maintenance is equally available to both the mother and the father. Additionally, the explanation to this section extends the definition of 'parent' to include a stepmother. However, this obligation is limited to parents who are unable to sustain themselves, making it a legal duty rather than a general moral responsibility.⁹

Maintenance Under Muslim Personal Law

"All those things which are necessary to support of life, such as food, clothes and lodging; many confine too solely to food." The fundamental principles of maintenance can be outlined as follows: (i) an individual is entitled to maintenance if they possess no property, (ii) they must be related to the obligor within prohibited degrees, or be the spouse or child, and (iii) the obligor must have the financial capacity to provide support.¹⁰ Additionally, the obligation of maintenance is influenced by the economic condition of both parties.¹¹

Maintenance of Wife

The husband is bound to maintain his wife so long as she is faithful to him and obeys his reasonable orders. If the marriage is valid and the wife is capable of rendering marital intercourse, it is the husband's duty to provide for her maintenance, even if she has the means to support herself. However, if she unjustifiably refuses to cohabit with him, she forfeits her right to maintenance. This right is also lost if she refuses to obey the husband's reasonable commands, unless her disobedience is justified by circumstances or she is compelled to leave due to cruelty.¹² If the husband refuses to maintain his wife without lawful cause, she has the right to sue for maintenance. However, she is not entitled to past maintenance, as maintenance is payable only from the date of the decree unless there is a specific agreement to the contrary.¹³

Maintenance of Children

In the case of legitimate children, the responsibility for their maintenance rests upon the father. The father is also responsible for the maintenance of his widowed or divorced daughter, as well as a child in the custody of the mother. However, he is not obligated to provide separate maintenance for a minor or unmarried daughter who refuses to live with him without reasonable cause. An adult son is not entitled to maintenance unless he is infirm. Additionally, the father is not required to maintain a child who has sufficient means for self-support through their own property. If the father is unable to provide maintenance due to poverty or infirmity, the responsibility falls upon the mother, and in her absence, the parental grandfather. Regarding illegitimate children, under Muslim law, the father is not legally bound to provide for them. However, Section 488 of the Criminal Procedure Code,

1908,(as amended up to 1955), imposes an obligation on the father to pay a reasonable amount for their maintenance, even if the mother refuses to surrender the child to him.¹⁴

Maintenance Under Christian Law

A Christian woman can claim maintenance from her spouse through both criminal and civil proceedings simultaneously, as there is no legal restriction. In criminal proceedings, religion is irrelevant, unlike in civil cases. Section 36 of the Indian Divorce Act, 1869, similar to Section 24 of the Hindu Marriage Act, allows for maintenance pendente lite but only for the wife, not the husband. Under Section 37 of the Indian Divorce Act, 1869, a divorced Christian wife unable to support herself can seek alimony in a Civil or High Court. The husband will be liable to pay maintenance as ordered by the court for her lifetime. The Act applies only to Christians and governs their maintenance rights, similar to Parsi law. Section 38 of the Indian Divorce Act, 1869 allows the court to order alimony as monthly or weekly payments to the wife or a trustee on her behalf, with provisions to modify, suspend, or revive payments based on circumstances.

Maintenance Under Parsi Law

A Parsi can seek maintenance through both criminal and civil proceedings, as there is no legal bar to pursuing both simultaneously. In criminal proceedings, religion is irrelevant, unlike in civil cases. If a husband refuses to pay maintenance despite a court order, he can be imprisoned until he complies.

The Parsi Marriage and Divorce Act, 1936 grants a wife the right to maintenance, including alimony pendente lite and permanent alimony. While a matrimonial suit is pending, the court may grant up to one-fifth of the husband's net income as alimony. Permanent maintenance is decided based on the husband's financial capacity, the wife's assets, and the conduct of both parties, and it remains valid as long as the wife stays chaste and unmarried. Under section 39 of Parsi Marriage and Divorce Act, 1936, maintenance provisions are similar to section 24 of the Hindu Marriage Act. As per section 40 of Parsi Marriage and Divorce Act, 1936, the court may order a defendant to pay a lump sum or periodic maintenance, considering both parties' financial situations and conduct. The order can be modified or revoked if circumstances change, such as remarriage or unchastity of the recipient spouse.¹⁵

Maintenance Under the Code of Criminal Procedure

Section 125 of the Code of Criminal Procedure provides a uniform legal remedy for maintenance, irrespective of religion. It applies to wives (including divorced wives unable to maintain themselves), children (legitimate and illegitimate) and parents.¹⁶

The key highlights of Section 125 include:

- It provides a quick and effective remedy for destitute dependents.
- The quantum of maintenance is based on the earning capacity of the husband.
- The wife's right to maintenance is independent of personal laws.

The Supreme Court in Mohd. Ahmed Khan v. Shah Bano Begum held that a Muslim woman could claim maintenance under Section 125 CrPC, reinforcing the secular applicability of the provision.¹⁷

FUTURE REFORMS AND RECOMMENDATIONS

To ensure a more equitable and effective maintenance system in India, several reforms are necessary –

Gender-Neutral Maintenance Laws: Maintenance provisions should explicitly apply to both spouses, ensuring fairness in cases where husbands may also require financial support.¹⁸

Uniform Civil Code (UCC) Implementation: A unified law applicable to all citizens, irrespective of religion, can eliminate discrepancies in maintenance laws under different personal laws.

Time-Bound Disposal of Maintenance Cases: Courts should set strict timelines for maintenance petitions to prevent financial hardships due to delayed judgments.¹⁹

Clarity in Quantum of Maintenance: A structured formula, similar to Canada's Spousal Support Advisory Guidelines, can ensure uniformity and prevent arbitrary decisions.²⁰

Strict Enforcement Mechanisms: Strengthening legal mechanisms for compliance, such as salary deductions and asset seizures, can prevent defaulters from avoiding payments.²¹

Incorporation of Mediation and ADR: Alternative Dispute Resolution (ADR) methods should be encouraged to settle maintenance disputes amicably, reducing the burden on courts.²²

Recognition of Homemaker's Contributions: Courts should

consider the non-monetary contributions of homemakers while determining maintenance to acknowledge their role in family well-being.²³

Awareness and Legal Aid Programs: Strengthening awareness campaigns and free legal aid services can help individuals, especially women, claim their rightful maintenance.²⁴

A reformed maintenance system that ensures efficiency, fairness, and gender neutrality will uphold the constitutional principle of equality and promote economic justice in society.²⁵

CONCLUSION

By virtue of judicial pronouncements and legislative reforms, the rights of women regarding maintenance have been significantly strengthened. However, true empowerment will only be realized when societal mindsets evolve. Women must emancipate themselves educationally, economically, and socially to ensure their well-being, recognize their rights, and assert their worth.²⁶ Only then can the social upliftment of the entire community be achieved. Furthermore, the effective implementation of maintenance laws is crucial to ensure compliance with the principles of justice and equality enshrined in the Constitution. The judiciary must continue to interpret and enforce maintenance provisions in a manner that upholds the dignity of all dependents, regardless of gender.²⁷ Sensitization of law enforcement agencies, legal literacy programs, and stringent measures against non-compliance can go a long way in making maintenance laws more effective.²⁸ Ultimately, maintenance is not just a legal obligation but a moral and social necessity. The law of the land must be upheld with diligence to ensure that maintenance provisions achieve their intended purpose – providing security and stability to those in need, thereby contributing to a just and equitable society.²⁹

Ultimately, maintenance should not be seen merely as a legal imposition but as a moral and social obligation grounded in the ethical fabric of our society. It is a reflection of collective responsibility to support those who are unable to sustain themselves. The law must serve not just as a deterrent against neglect but as a beacon of hope and security for the marginalized. When maintenance laws are upheld with sincerity, compassion, and a sense of duty, they contribute not only to individual well-being but also to the broader goal of establishing a just, inclusive, and equitable social order.

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