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**PERSONAL LAWS, MAINTENANCE AND MEN: A CORRELATION AND IMPACT OF UCC****AUTHOR** – SALONI SANJEEV GULHANE, STUDENT AT CHRIST UNIVERSITY, BANGALORE**BEST CITATION** – SALONI SANJEEV GULHANE, PERSONAL LAWS, MAINTENANCE AND MEN: A CORRELATION AND IMPACT OF UCC, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (1) OF 2025, PG. 904-911, APIS – 3920 – 0001 & ISSN – 2583-2344.**Abstract**

Personal Laws of different communities have been a governing factor for various subject matters like adoption, inheritance and succession for years. These are derived from traditions and beliefs that have been passed down for generations. One such subject matter is maintenance. Different communities each have uncodified or codified laws regarding the grant of interim maintenance and alimony. The right to receive maintenance is granted under the secular civil code for all citizens of India as a whole under Section 125 of the Cr.P.C<sup>1676</sup>. However, the additional provisions of maintenance under communities makes it possible for the wife to seek maintenance under an additional legally recognized provision.

With multiple provisions to claim maintenance under, the husband paying the sum under different laws would be obligated to pay and would likely be overburdened. And this would act as a form of gender injustice.

The issue of the overlapping jurisdiction has been deliberated over in many cases, one of them being the landmark case, *Rajnish vs Neha*<sup>1677</sup> which has set down various guidelines for the grant of maintenance. There is also a sense of gender bias that is seen among these laws where one such statute, The Hindu Marriage Act, 1955 (HMA) allows for alimony to men, while the other personal laws limit their ambit to only women. In India, the practice of women paying for the maintenance of women has not been a prevalent practice and only in the recent few years has this been practiced as can be seen in cases like *Rani Sethi vs Sunil Sethi*<sup>1678</sup>.

In this paper, I will be analyzing the background of maintenance laws and why they came to be as gender specific as they present to be and what has changed in terms of today's scenario. What will also be assessed is whether with the advent of the UCC there will be a possibility for a better maintenance law which governs maintenance without hampering gender justice.

**Keywords:** Maintenance, wife, husband, overlapping jurisdictions, unified procedure.

A decorative banner with a ribbon-like border, containing the text 'GRASP - EDUCATE - EVOLVE' in a light green, sans-serif font.

<sup>1676</sup> Code of Criminal Procedure, 1973

<sup>1677</sup> *Rajnish v. Neha*, (2021) 2 SCC 324 [*Rajnish*]

<sup>1678</sup> *Rani Sethi v. Sunil Sethi* 179 (2011) DLT 414

## INTRODUCTION

In India, the maintenance laws are meant to be a social legislation for the welfare of the people who are unable to fend for themselves. It has traditionally been envisaged as a beneficial legislation which means that in matrimonial proceedings it is more often than not, proven to be in favor of the applicants claiming maintenance. According to Black's Law Dictionary, 'maintenance' means the "*Financial support given by one person to another, usually, paid as a result of a legal separation or divorce; esp., ALIMONY*". In India, there are different personal laws governing maintenance such as The Hindu Marriage Act, 1955 (the HMA) and the Hindu Adoptions and Maintenance Act, 1956 (meant for the Hindus, Sikhs, Jains and Buddhists), the Indian Divorce Act, 1869 (meant for Christians) and Parsi Marriage and Divorce Act, 1936 (meant for Parsis). The secular law governing maintenance is Section 125 of Cr.P.C.<sup>1679</sup>.

Over the years both married and divorced women have been granted the right to apply for maintenance under their personal laws and under the secular law that is Section 125 of the Cr.P.C. With the advent of the Uniform Civil Code (UCC), the personal laws governing civil matters of each community are going to be done away with and these matters are going to be governed by laws that shall apply to each Indian regardless of their religion. There is already a secular provision that provides for maintenance for a wife regardless of her religion. However, the current provision lacks efficiency on the gender justice front and whether with the UCC there could be a chance to have better civil law on maintenance encompassing all the requirements of gender justice is a matter that will be further deliberated in the paper.

The aim of this paper is to deliberate over the effect of allowing the wife to claim maintenance under different legislations and whether this results in a form of gender injustice for the

husbands who have to pay the maintenance allowance. The author will also touch upon the legal framework for men to claim maintenance.

The aim of this paper is to not attack the concept of maintenance as a whole. On the other hand, maintenance is a necessary practice when a woman is unable to maintain herself. There are conditions given under these provisions which limit the time frame for which maintenance is to be granted by imposing certain conditions. For instance a common ground for canceling maintenance would be if the divorced wife remarries again. Therefore, the intention behind the existence of such laws is somewhat protected under these laws. An order for a temporary maintenance or alimony pendente lite is an order for maintenance to be paid to the claimant during the subsistence of the matrimonial proceedings, however in case of permanent alimony it is paid after the proceedings are over and it is permanent in nature that is it is permanent in nature subject to certain conditions. For instance, under Section 25(3) of the Hindu Marriage Act, 1955

*"If the court is satisfied that the party in whose favor 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 has had sexual intercourse with any woman outside wedlock, 57 [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]."*

Therefore, if any of the essentials such as marrying again and not remaining unchaste or in case the husband is an applicant, indulging in sexual intercourse outside of marriage, the court can cancel any such order made for payment of the maintenance amount.

Under the secular law, Section 125(4) and 125(5) of the Cr.P.C. the law states that,

*(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her*

<sup>1679</sup> Code of Criminal Procedure, 1973



husband, or if they are living separately by mutual consent.

(5) 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.

Thus on committing adultery, residing separately either through a mutual decision or solely on the applicant's decision, the court may be entitled to cancel such an order (under Section 127(2) of the Cr.P.C.).

### **THE RIGHT TO CLAIM MAINTENANCE UNDER DIFFERENT LAWS**

In various judgments it has been contended that a wife can file for maintenance under different laws. The different laws which govern maintenance in India include Special Marriage Act, 1954, Section 125 of the Cr.P.C, 1973, Protection of Women from Domestic Violence Act, 2005.

Under the landmark judgment, *Rajnesh v Neha*<sup>1680</sup>, a wife has been granted the right to apply for maintenance under different legislations and guidelines have been issued so as to deal with the problems arising out of allowing claims under multiple proceedings or overlapping jurisdiction. In this case, the Supreme Court held that, “Maintenance may be claimed under one or more of the aforementioned statutes, since each of these enactments provides an independent and distinct remedy framed with a specific object and purpose.” So even though there are different laws pertaining to the same subject matter, the power to claim maintenance is not restricted to one statute only as each statute differs from each other.

This is where the issue of overlapping jurisdiction comes into play, because of the amount of simultaneous proceedings that would take place in courts regarding both

interim maintenance and permanent alimony. Therefore the method followed in such situations was that if an amount of maintenance was awarded under a provision and later a separate proceeding was instituted under another provision governing maintenance, then the maintenance amount decided so would be by taking into account the amount granted in the previous proceeding. A few case laws are cited below in which the court has time and again reiterated that a woman can claim maintenance under various jurisdictions.

In *Gossai Ch. Das v. Beauty Das*<sup>1681</sup>, it was held that a proceeding under Section 125 of the Cr.P.C would be independent of any proceeding under Section 24 and 25 under the HMA and a suit for maintenance could not be held as not maintainable because of the existence of a previous judicial pronouncement awarding maintenance under another Act. In *T. Rajendar Singh v. Maya Devi*<sup>1682</sup>, it was held that if interim maintenance is granted during a period of the proceedings and at the same time maintenance is granted under Section 125 of the Cr.P.C, then both orders of the court would be required to be complied with until the final decree is delivered by the Civil Court and only then can the party make an application under Section 127 of the Cr.P.C. for the purpose of modification or cancellation of the order under Section 125 of the Cr.P.C.

In *Geeta Chatterjee v. Probhat Kr. Chatterjee*<sup>1683</sup>, the High court awarded the wife a maintenance amount of Rs.350/- as maintenance under Section 24 of the HMA. This was challenged in an appeal by the husband which was in the favor of the wife. The High Court also was of the opinion that the husband should pay to the wife a sum of Rs. 500/- as expenses of the proceedings before the High Court. During this appeal proceeding it was also brought to the notice of the court that the wife was awarded

<sup>1681</sup> Gossai Ch. Das v. Beauty Das, 96 CWN 861

<sup>1682</sup> T. Rajender Singh vs Maya Devi Alias Gayatri And Ors, 1996 (1) ALD Cri 883

<sup>1683</sup> Geeta Chatterjee v. Probhat Kr. Chatterjee, AIR 1988 Cal 83

<sup>1680</sup> Rajnesh, *supra* note 1

Rs.200/- under Section 125 of the Cr.P.C. It therefore directed the husband to pay the amount (Rs.350) after deducting the amount that he was required to pay under Section 125 of the Cr.P.C. And therefore the lower amount (Rs.200) was adjusted as against the higher amount (Rs.350).

In *Ram Awadh v. State of U.P.*, the respondent filed for Interim Maintenance under Section 125 of the Cr.P.C which was rejected and then she filed a case under Section 24 of the HMA and got awarded a maintenance amount. The fact that she was awarded maintenance under a different jurisdiction after being rejected in the previous proceedings under a different statute was contended by the husband. The court however held that an order passed under Section 125 of the Cr.P.C can't take away the jurisdictional power of the court to grant pendente lite maintenance to the wife and children under Section 24 and Section 26 of the HMA.

In *Mst. Zohra Khatoon v. Md. Ibrahim*<sup>1684</sup>, it was held that Section 125 of the Cr.P.C does not completely exclude the application of personal laws. This is because these provisions would be used while determining the validity of marriage and the mode of divorce. However when it came to the decision of the quantum of the maintenance and the circumstances under which it would be granted, the personal law provisions would play no role. This again shows the independence of two statutes.

In *Bajirao Raghoba Tambare v. Tolanbai Bhagwan Tonge*<sup>1685</sup>, the court held the independence of a maintenance order under the secular provision and the personal law and how both of them don't affect each other. It was held that provisions of personal law which applies to a particular religious community would not be used for the purpose of interpretation of a secular law that is meant to apply to all people regardless of their religion. It

was held that the meaning of the word wife as given under different personal laws can't be used for interpreting secular laws.

*"It is not possible to assign a different meaning to the word "wife" for persons belonging to different religions or governed by different personal laws. An extended meaning cannot therefore be given to the word "wife" in Section 125, Criminal Procedure Code on the basis of Section 25(1), Hindu Marriage Act."*

### **THE MAIN ISSUES WITH ALLOWING CLAIMS OF MAINTENANCE UNDER DIFFERENT STATUTES**

There are mainly two issues with granting the right to claiming maintenance under various provisions. Firstly, there would be multiple proceedings for the same subject matter of maintenance. This would lead to more consumption of the court's resources and time as compared to if the proceedings were under one jurisdiction. This practice would go against the doctrine of Res Judicata. According to Black's Law Dictionary, Res Judicata means "A matter adjudged", "a thing judicially acted upon or decided a thing or matter settled by judgment".

In *American S. S. Co. v. Wickwire Spencer Steel Co., D.C.N.Y.*<sup>1686</sup>, "it was held that this doctrine is a rule which states that a decree or order which is passed by a competent court would be conclusive in nature, in terms of the rights of both the parties."

This doctrine becomes relevant when the same issue is brought about by the same parties either in the same court or a different court. As long as there was a fair hearing of both parties, the decision was made by a court having a competent jurisdiction over the matter and the decision was made on merits then the matter is said to have already been adjudged.

This principle was brought about to ensure that the court proceedings would occur efficiently by the way of the court being able to dispose of

<sup>1684</sup> Mst. Zohra Khatoon v. Md. Ibrahim, AIR 1981 SC 1243

<sup>1685</sup> Bajirao Raghoba Tambare v. Tolanbai Bhagwan Tonge, 1979 Mah LJ 693 : (1980 Cri LJ 473)

<sup>1686</sup> American S. S. Co. v. Wickwire Spencer Steel Co., D.C.N.Y., 42 F.2d 886 (W.D.N.Y. 1930)

cases once and for all, and not further using the court's resources and time for a matter that has been duly dealt with and instead making space for other cases. In a country like India which holds the largest population of 140.76 crores, and the total pending cases reaching 44489582 cases in district courts, 5717877 cases in the high court and 79488 cases in the Supreme Court, efficiency in disposal of cases is the need of the hour. In a recent petition dismissed by the Supreme Court, the petitioners contended that if two cases are simultaneously being conducted in two different courts and if one of the court was to reject the order and the other were to award maintenance, then at least one of the court has given a wrong order and if both the courts were to give the same order then there would be no point of wasting the court's time and resources.

Secondly, even though the amount decided would not be completely independent of the amount granted under the previous jurisdiction it would however be in addition to the amount granted under the previous jurisdiction. Orders passed under the secular law (Section 125 of the Cr.P.C) and personal laws would act as a burden on the husband who has to pay the maintenance as he would have to pay maintenance under two different jurisdictions. This would pose a disadvantage for husbands to pay for their divorced wives and would entail as a form of gender injustice. In the case, *Rajnish v Neha*<sup>1687</sup>. The court reiterated that the wife can claim maintenance under different statutes that provide for the same, however the court held it to be "inequitable" to grant maintenance under different proceedings, independent of the amount decided in previous proceedings under a different statute. Instead the court, while deciding the quantum of the maintenance in the present proceeding should take into consideration the amount awarded under the previous proceeding. It also held that it was mandatory for the applicant to disclose the order for the previous maintenance amount,

to make it possible for the court to take into consideration the amount previously awarded and to not award any maintenance independent of the amount granted previously.

In *Sudeep Chaudhary v Radha Chaudhary*<sup>1688</sup>, the applicant, the wife had filed for maintenance under Section 125 of the Cr.P.C. and then under the HMA. She was subsequently granted maintenance under Section 125 of the Cr.P.C and under HMA. On non-payment of the maintenance amount awarded, the wife initiated recovery proceedings and the court held that the amount awarded under Section 125 of the Cr.P.C should be adjusted against the amount awarded in the matrimonial proceedings under HMA.

According to the directions of the court in the same case, the court would have to "consider an adjustment or set-off", of the amount initially awarded under the previous proceeding, while deciding the amount in the proceeding under a different statute governing maintenance.

It also directed that the orders passed in the previous proceeding would have to be altered in the previous proceeding and that would again entail the reopening and revision of a previous proceeding so made and would go against the doctrine of Res Judicata and would further divert the resources and time of the court. Even though the amount of maintenance is adjusted and not granted independently, the husband would have to pay maintenance under two different statutes.

In *Puspa Devi v. Anup Singh*<sup>1689</sup> The High Court observed that, Section 125 of the Cr.P.C and Section 24 of the HMA are independent proceedings. The high court in this case while passing an order of the quantum under Section 125 of the Cr.P.C said that it would also pass an order for the adjustment of the amount awarded under section 24 until the period it subsists for. Therefore, the case was shifted back from sessions to trial for rehearing to make the due adjustment of the amount

<sup>1687</sup> Rajnish, *supra* Note 1

<sup>1688</sup> Sudeep Chaudhary v. Radha Chaudhary, (1997) 11 SCC 286

<sup>1689</sup> Puspa Devi v. Anup Singh, 1996 Cr. IJ 2384



awarded under section 24. Through this practice the court would have to reopen a previous proceeding and thus divert the court's time and resources.

In *Nagendrappa Natikar v Neelamma*<sup>1690</sup>, this case the wife instituted proceedings claiming maintenance under Section 18 of the and this was subsequently done after signing the consent letter in proceedings under Section 125 of the Cr.P.C, stating she wouldn't make any other claims for maintenance. The court held that proceedings under the section 125 of the Cr.P.C were to ensure a "speedy" remedy for the applicant. Therefore, no order as a result of proceedings would bar the remedy under section 18 of Hindu Adoptions and Maintenance Act, 1956

An exception to this right can be seen under the maintenance laws under Muslim Personal law as compared to other religions. Muslim Women (Protection of Rights on Divorce) Act, 1986 is the statute that governs maintenance for Muslim women. The husband is obliged to pay the maintenance amount only until the period of iddat and in case the wife is pregnant, the liability would extend until the baby is born. Additionally, the Dissolution of Muslim Marriages Act, 1939 says that a divorced woman can claim mehr which was unpaid during this unpaid period. The Muslim personal laws don't provide for maintenance after the iddat period and then they claim maintenance under the secular law. They can however claim maintenance under Cr.P.C's Section 125. Therefore here this law acts as an exception.

### **THE PURPOSE OF MAINTENANCE LAW**

Indian society has been a traditionally patriarchal society, where women were wedded off at an early age without any education or qualifications to be able to fend for themselves. This is a norm that still subsists today even with the rampant modernization. Therefore, to undo this patriarchal wrong there is a remedy provided for those who can't fend

for themselves. In *Sailendra Nath Ghosh vs State Of West Bengal And Anr.*<sup>1691</sup> about section 125 of the Cr.P.C, it was said that, "The object is to prevent vagrancy and destitution and also to provide quick and summary remedy to a class of persons who are unable to maintain themselves."

This can be said to be an objective set by all personal laws governing maintenance as well. Maintenance laws in general further the objective set by Article 15(3) and Article 39 of the Indian Constitution. Maintenance can also be said to be a moral obligation on the part of the person who is able to do so. In *Bhagawan Dutt vs Kamala Devi*<sup>1692</sup>, it was held that section 125 of Cr.P.C is actually a moral obligation which requires a person to fulfill his obligation towards his wife, child and parents. This section gives effect to the natural duty of a man to provide for his wife. It also makes sure that the wife does not have to resort to committing a crime.

In *Ramesh Chander Kaushal v Veena Kaushal*<sup>1693</sup>, It is a provision meant to further social justice and to protect women and children and falls under the "constitutional sweep" of Article 15(3) and Article 39 of the Indian Constitution. "This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39.

Further under *Boli Narayan Pavye v. Siddheswari Morang*, the courts brought the right to maintenance under the purview of fundamental duties. Since the law of maintenance is under the constitutional sweep, hence they are to be followed under Article 51-A under the constitution. In *Bhuwan Mohan Singh v Meena*<sup>1694</sup>, the Supreme Court held that the provision of Section 125 of the Cr.P.C was to provide for a solution for a separated woman's distress and financial issues who has left her

<sup>1690</sup> Nagendrappa Natikar v Neelamma, 2013-3-L.W. 776

<sup>1691</sup> Sailendra Nath Ghosh vs State of West Bengal And Anr. 1998 (1) ALT Cri 17, I (1998) DMC 487

<sup>1692</sup> Bhagawan Dutt vs Kamala Devi, 1975 AIR 83

<sup>1693</sup> Ramesh Chander Kaushal v Veena Kaushal, (1978) 4 SCC 70

<sup>1694</sup> Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353



matrimonial homes for various reasons under the Act, to make sure that she can provide for herself and her children. The court held that women are entitled to live a similar life to the one she would live had she lived with her husband. She is entitled to live with dignity and it is the responsibility of the husband to make sure she does not face destitution. As long as the husband is able bodied he would have to pay maintenance.

### **WHY DO THESE LAWS SHOW A GENDER BIAS TOWARDS WOMEN**

Historically India has been a very patriarchal society in which women were assigned certain gender roles like maintaining the household and raising their children, whereas men were assigned the role of earning a livelihood for the family. As a result they weren't completely self-sufficient and were dependent on their husbands for a livelihood.

The estimated Labour Force Participation Rate also known as the LFPR for women in the age group of 15 years and above was 30.0%, 32.5% and 32.8% during 2019-20, 2020-21 and 2021-22, respectively. This does indicate a growth in the percentage of working women and is a positive sign. However as compared to men whose LFPR increased from 75.8% in 2017-18 to 78.5% in 2022-23, these numbers are relatively less.

To understand further why judgments in cases of maintenance show a gender bias towards women, we would have to look into the origin of these laws. Each law governing maintenance has its origin in different sources. Especially the personal laws governing maintenance find their origin in the religious texts like the Dharmashastras, the Holy Quran and the Holy Bible. Under Christian personal law the church also plays an important role in providing remedy to the destitute. Under Hindu law, it is the Shastras that talk about marriage as a 'sacred' and a 'holy' union by which the wife's new household becomes that of the husband's and she becomes an inalienable part of her husband. *"The wife is completely transplanted*

*on the household of the husband, and she gets a new birth as a partner of her husband and becomes a part and parcel of the body and mind of the husband."*

The husband is obligated to provide for the wife by earning a livelihood to also further the growth of the family. Along with these duties he is also supposed to provide protection to his wife and to not treat her cruelly. The Shastric laws considered the wife at the center of these laws. Even during the time of Manu and Yajnavalkya non-maintenance of the wife was considered an offense.

Even the constitutional provisions promote the practice of maintenance. This is as per Article 15(3) read with Article 39 of the Indian Constitution. Article 15(3) says, *"Nothing in this article shall prevent the State from making any special provision for women and children"*, whereas Article 39(a) says that *"The State shall, in particular, direct its policy towards securing (a) that the citizens, men and women equally, have the right to an adequate means to livelihood"*.

It has been traditionally the case that the right to maintenance is traditionally granted on the basis of certain circumstances where the wife is unable to maintain herself and the husband has sufficient means. In the case of *Kamelandra Sawarkar v. Kamelandra*<sup>1695</sup>, the court held that the husband cannot solely depend on the wife's income and the court also held that granting maintenance to a man who is skilled would further the idea of idleness. *Nivya V M v. Shivaprasad M K*, if the husband provided maintenance even if he is fully capable to work would further idleness. The condition to claim maintenance under this law would be that the husband has to prove to the court that he is suffering from a permanent disability.

Further in *Shailija v. Khobbana*<sup>1696</sup>, the Supreme Court held the distinction between "capable earning" and "actual earning". So if the wife was capable of earning, that should not be a cause

<sup>1695</sup> Kamelandra Sawarkar v. Kamelandra AIR 1992 Bom 493

<sup>1696</sup> Shailija v. Khobbana, (2018) 12 SCC 199

for reducing the amount granted. Therefore from the above cases one can infer that the conditions that a husband and a wife are subjected to are different. It is relatively easier for women to be granted maintenance as compared to men.

### **CONCLUSION:**

In today's modern society there are family's where a percentage of women are not solely dependent on their spouses to survive and are sometimes the breadwinners of the family.

With this increasing trend, the laws should also adapt and there should be a reform. In such cases, maintenance laws should be less strict towards men and less biased towards women. A uniform maintenance law should prioritize gender justice in all aspects. Firstly, by bringing a uniform law and thus one jurisdiction under which maintenance can be claimed, the burden on men would be relatively reduced as there would be only one law providing for maintenance. Also, the burden on courts would be reduced as the number of cases would reduce by some percentage.

With the advent of UCC if the husband and the wife of all religions are provided with the right to claim maintenance under one maintenance law then it would to a great extent reduce the problem of gender inequality. The existing provision for claiming maintenance that is Section 125 of the Cr.P.C, it is only limited to women and hence husbands are left out of its ambit. It therefore does not serve as an effective gender neutral legislation. Even among the personal laws, only the Hindu Marriage Act, 1956 includes husbands under its ambit. In the absence of such legislation the UCC bill can provide for this vacuum by providing for all of this.