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## MAINTENANCE AND ALIMONY RIGHTS OF THE WIFE WHEN THE HUSBAND'S ASSETS ARE IN HIS PARENTS' NAME

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### ABSTRACT

In India, a wife's right to maintenance is primarily governed under the Criminal Procedure Code 1908 (CrPC), now being replaced with the *Bhartiya Nagarik Suraksha Sanhita 2023 (BNSS)*, which ensures that after marriage, the person shall provide sufficient means to the wife, children, and parents who are unable to maintain themselves. Though this bare provision is vast, but still focuses on providing a crucial support mechanism to ensure financial support of the wife, especially when she is unable to maintain herself. These laws apply to all types of marriages in India, but if a Hindu marriage is practised, some laws also outline provisions for maintenance, particularly for wives living separately from their husbands under certain conditions. Due to constant interpretation of laws by the Supreme Court as per the changes in society in related subjects of marriage, while their approach in these sensitive matters has always promoted safety and maintenance of rights to women, it has been commendable. Laws and precedents related to the maintenance of children and the wife after divorce have acted as a pillar to support their financial needs to live a normal life even after divorce. There has been a continuous debate in society on the amount being given as maintenance and alimony by a husband to his wife after divorce, highlighting an increasing trend of men transferring assets (especially to parents) to avoid financial liability and the resulting legal complexity, due to which many individuals who are unaware of their rights and exploited and pressurized of settlements that are not at standardised level. This paper highlights the recent trend and its implications, while trying to provide an ethical, reasonable solution along with details an individual should look into so that their interest can be safeguarded and the rights of women are prevailed as per the law.

Keywords: Right to Maintenance, Hindu Marriage, Alimony

### 1. INTRODUCTION

India is a diverse country with the majority practicing the Hindu religion. Hinduism is considered a sacred religion that is said to have existed for ages and is considered the oldest religion. However, the practices under this religion are controlled and regulated by different customs, rites, and rituals in different provinces and among different castes and communities according to their own beliefs and traditions. There are no limitations to any practices done, as it is a matter of belief and

customary rights for any Hindu, whether individual or group. Until the enforcement of the Hindu Marriage Act 1955 (**HMA**).

Before this, there was no codified law that controlled the traditions of Hindu marriages. Hindus followed '*shastra*,' which is considered as 'the sacred scriptures of Hinduism, consisting of four categories of text, the *Sruti*, *Smriti*, *Purana*, and *Tantra*.<sup>1098</sup> and the principles defined in this text were considered '*dharma*,'

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<sup>1098</sup> '*Shastra*' meaning defined in Merriam-Webster dictionary.

which were an individual's duty fulfilled by observance of custom or law.<sup>1099</sup> Similarly, marriage, which was considered a sacramental bond, was kept outside the purview of any law. However, registration of marriage in Hindu law is not a preliminary condition to consider it as a valid marriage. The Supreme Court in the case of **Seema v. Ashwani Kumar (2006)**<sup>1100</sup> held that: "Though registration itself does not affect the validity of marriage, it provides conclusive proof of the marriage having taken place..." (emphasis supplied)

Since marriage among Hindus was considered an indissoluble bond, the term "divorce" was introduced during the enactment of the Hindu Marriage Act in 1955. Section 13<sup>1101</sup> of this act defines the meaning of divorce in Hindu marriages. There have been multiple amendments to Section 13 that include additional grounds for divorce. As a result, Section 13 has shown an important transformative change in Hindu marriage laws, thereby establishing specific conditions under which divorce can be granted.<sup>1102</sup>

During the proceedings of divorce, the concept of maintenance arises, in which one of the spouses who is financially dependent on the other would be eligible to seek maintenance from him/her so that after divorce, the person could maintain their standard of living, which was before the divorce. In India, wives are mainly dependent on their husbands and claim maintenance. During the proceedings themselves, the amount of maintenance or alimony is discussed and finalised under Indian law. There are several combinations of laws that are applied to seek maintenance depending upon various factors, including but not limited to the lifestyle of the spouse, the income of the spouse providing maintenance, social status, religion, etc.

This paper focuses on Hindu personal laws and the rule established through presents and legislative laws governing right to maintenance for the women, this paper also focuses on loopholes regarding the calculations of maintenance being limited to the husband's declared assets which, now a days leading to manipulation of assets as husbands before making these payments transfer the ownership of all assets in their name to rest of the family members, so that these assets are excluded from these calculations. This practice results in the manipulation of financial disclosures and ultimately denies the wife fair post-divorce support.

## 2. CONCEPTUAL AND LEGAL FRAMEWORK

### 2.1 Maintenance

The term 'maintenance' can be described as something that can provide for the necessities of life, such as food, clothing, shelter, medical expenses, etc<sup>1103</sup>. The husband must provide financial support to his wife, which covers the basic requirements of life. This becomes even more critical when the wife is the housekeeper and is dependent on the husband for financial assistance. The landmark case of **Rajnesh vs. Neha (2020)**<sup>1104</sup> provides a clear distinction between interim and permanent maintenance under Hindu law. It consolidates principles from all earlier rulings and provides a structured framework for maintenance awards. A combination of Hindu law with procedural laws is analysed in such proceedings and calculations, including but not limited to:

1. Section 144 of the Bhartiya Nagarik Suraksha Sanhita 2023<sup>1105</sup> (**BNSS**)
2. Hindu Adoptions and Maintenance Act 1956 (**HAMA**)
3. Sections 24 & 25 of the Hindu Marriage Act 1955 (**HMA**)

There have been recent developments in the amount of maintenance provided to the

<sup>1099</sup> 'Dharma' meaning defined in Merriam-Webster dictionary.

<sup>1100</sup> (2006) 2 SCC 578.

<sup>1101</sup> Hindu Marriage Act 1955.

<sup>1102</sup> <https://blog.ipleaders.in/divorce-under-hindu-marriage-act-1955/> (Last accessed on 03 April, 2025).

<sup>1103</sup> <https://blog.ipleaders.in/husbands-right-claim-maintenance/> (Last Accessed on 10 July 2025).

<sup>1104</sup> (2020) SCC Online SC 903.

<sup>1105</sup> Earlier, Section 125 of the Code of Criminal Procedure 1973 (CrPC).

spouse. In the case of **Rakhi Sadhukhan vs Raja Sadhukhan (2025)**<sup>1106</sup> the judgment calls for deeper scrutiny of the paying spouse's income, including declared, undeclared, and historical earnings. In this case, the judges not only examined the husband's present salary, but potential, past earnings, and assets. This step would now help the wife to meet the expenditure incurred to maintain a standard of living comparable to what she enjoyed during the marriage and to secure her financial future while meeting the inflation in the state.

## 2.2 Alimony

On the other hand, Alimony refers to a court-ordered payment awarded to a spouse or former spouse within a separation or divorce agreement. The reason for alimony is to provide financial support to the spouse who makes a lower income, or in some cases, no income at all<sup>1107</sup>. This may include a periodic, predetermined sum to the spouse following a separation or divorce, to provide support so that the spouse can continue living the lifestyle to which they had been accustomed after the divorce. If a spouse refuses to pay or is not able to keep up with the date of alimony payments, it may result in civil or criminal charges for the payer. The only condition in which these payments stop is upon death, remarriage, or through order of the court.

## 2.3 Matrimonial Home

The matrimonial home is the primary residence where a married couple resides during their marriage. Though there is no explicitly defined term anywhere in the Hindu law, it can be closely understood by the meaning of "shared household." This term gives a wide meaning to the matrimonial home.

It refers to a household where a woman has lived or at any stage has lived in a domestic relationship with her spouse. This may include the matrimonial home, but it also extends to other residents, such as the homes of in-laws,

parents, or even rented accommodations. Section 17 of the Protection of Women from Domestic Violence Act 2005 (**DV Act**) has also provided the right to aggrieved women to reside in the shared household. The section states:

### 17. Right to reside in a shared household –

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established in law.

The understanding of the meaning of the matrimonial home could be crucial during the divorce proceedings, as it is included in the calculations of maintenance.

## 2.4 Why does Ownership matter?

If the property is legally registered in the name of the husband's parents, the wife cannot claim ownership or a share in it, even after divorce. A daughter-in-law has no inheritance rights<sup>1108</sup> to the self-acquired property of her in-laws. The law<sup>1109</sup> states that only legal heirs can inherit it. The Court, however, in the case of **Pratibha Rani vs. Suraj Kumar (1985)**<sup>1110</sup> stated that if the wife can prove financial contribution in the form of investment contribution made towards that property, or paying EMIs, only then she may seek a beneficial interest, which could be hard to establish if she is not a working woman.

The ownership of a property is as per this law.<sup>1111</sup> It is determined by a title deed, which refers to a legal document proving ownership of the said property. If, as per the deed, the husband is not

<sup>1106</sup> Rakhi Sadhukhan vs Raja Sadhukhan (2025) INSC 789.

<sup>1107</sup> <https://www.investopedia.com/terms/a/alimony.asp> (Last Accessed on 10 July 2025).

<sup>1108</sup> Section 8, Hindu Succession Act, 1956.

<sup>1109</sup> Hindu Succession Act, 1956.

<sup>1110</sup> 1985 SCC (2) 370.

<sup>1111</sup> Transfer of Property Act, 1882.

the owner, the wife cannot claim it. However, if the said property is transferred to the husband via gift, will, or sale, and the transfer is legally valid, in that case, the property becomes his self-acquired property, and the wife can claim a share in divorce/alimony. Moreover, if the husband has a share in the joint family property,<sup>1112</sup> the wife may claim maintenance from his share, but still cannot claim ownership.

## 2.5 Beneficial Interest

Beneficial Interest is considered a right where an individual who is not a legal owner of the property is granted the right to share the benefits of such property. This includes the right to share rental income from the said property, share of revenue if the property is sold, etc. The person who is the beneficial owner of a property is considered a beneficial owner. Beneficial ownership is different from legal ownership as the beneficial owner's name may not appear on the title deeds, and may not have overall control over the property. In some cases, the public may not be able to find out the names of the beneficial owners of a property, as they are not required to declare them.<sup>1113</sup>

## 2.6 Constructive Trust and the Principle of Alter Ego

Beneficial ownership can be granted through Express trust, resulting trust, and Constructive trust. In case of marriages, constructive trust is applied as it arises when there is a common intention of the wife in the property, even if she does not contribute to the purchase of that property. For example, after marriage, the wife moves in with the Husband and pays for a new kitchen, renovation of the house, etc. In such cases, the court may consider that this behaviour proves a common intention to share the property, as it would be unusual for someone to pay for this expenditure without any financial gain in return.

The concept of constructive trust was established in a leading case of *Rawluk v.*

*Rawluk (1990)*.<sup>1114</sup> Where the wife played a significant role in running and profiting from the farm, registered in her husband's name. The Supreme Court of Canada considered the contributions made by the wife to the property of the husband without being the legal owner, and the wife was entitled to her share in the property.

Alter ego is a legal doctrine used in deciding whether to lift the corporate veil or not. In this doctrine, the court decides that the corporation between the individual and the corporation lacks a separate identity and ignores the corporate status of the corporation concerning its limited liability.<sup>1115</sup> The complexities of this doctrine which was earlier studied in corporate veil was highlighted in family law proceedings through the case of *Atkins & Hunt (2020)*<sup>1116</sup> where the husband transferred the controlling shares in N Pty Ltd which was his sons company during ongoing proceedings of litigation, Though the wife's claims of husband's alter ego was dismissed as she failed to prove that the company lacks independent existence, and ordered to present compelling evidences in support of her claim. This decision reinforced that this principle can be established if the spouse's company acts merely as a puppet, and strong evidence must be presented to lift the corporate veil and proof that the directors act solely at that spouse's direction.

The Court's reasoning in the context of marriages states here that if the husband built a sham company just to hide assets and transfer them in the name of that company, the corporate veil will be lifted off by the court if strong supporting evidences are provided by the wife, the court will treat those undeclared assets as if the corporate veil.

However, in India, the principles of Alter Ego and Constructive Trust are not directly applied in the calculation of maintenance, which is a big drawback, as both these doctrines are

<sup>1112</sup> Hindu Undivided Family.

<sup>1113</sup> <https://osborneslaw.com/blog/beneficial-interest-in-property/> (Last accessed on 20 June 2025).

<sup>1114</sup> *Rawluk v. Rawluk* (1990 SCC); 1990 CanLII 152 (SCC).

<sup>1115</sup> [https://www.law.cornell.edu/wex/alter\\_ego](https://www.law.cornell.edu/wex/alter_ego) (Last accessed on 20 June 2025).

<sup>1116</sup> *Atkins & Hunt* (2020) FamCAFC 252.

important to study the contributions of a wife during marriage and protect her from the manipulation of her husband, who was submitting false income/assets for maintenance calculations.

### 3. JUDICIAL INTERPRETATIONS AND TRENDS

#### 3.1 *Laws of Maintenance in Hindu Marriages*

##### (i) **Bhuvan Mohan Singh vs. Meena (2015)**<sup>1117</sup>

While interpreting Section 125 CrPC, the Hon'ble Supreme Court laid importance on creating and promoting social justice in society. The case was interpreted in a way that it stops wives or children from being forced into homelessness and poverty<sup>1118</sup>. Which was important since even after the passing of a favourable decree, the wife may suffer unnecessary distress coping with the day-to-day expenses, which are to be borne from the amount of maintenance.

"...a speedy remedy for the supply of food, clothing, and shelter to the deserted wife."

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##### (ii) **Sunita Kachwaha vs. Anil Kachwaha (2014)**<sup>1119</sup>

This landmark case was interpreted section 125 CrPC as a welfare provision which was aligned with constitutional commitment to gender equality and human dignity, highlighting that mere employment of the wife should not be a ground for denying her maintenance, her income must meet her needs to maintain herself in a reasonable comfort as per the status and standard of living she was accustomed to in her matrimonial home. The Hon'ble Supreme Court decided that mere income from employment should not be considered as the only factor.

##### (iii) **Rajesh vs. Neha (2021)**<sup>1120</sup>

The Hon'ble Supreme Court held that the financial capacity of both parties must be assessed holistically, even if the wife earns more. Earning more income compared to her wife does not automatically disqualify her right to maintenance if she is burdened with child care and other needs, even if her husband is earning less. This landmark case laid down uniform guidelines for maintenance, requiring mandatory financial disclosures from both sides.

#### 3.2 *Right to maintenance for the wife when the husband claims to have no income or is unemployed*

##### (i) **Kiran Jyot Maini vs. Anish Pramod Patel (2024)**<sup>1121</sup>

The Court observed that spouses having high education qualifications, yet choosing to remain idle without making genuine efforts to secure employment, should be strongly discouraged. In this case, it was held that even if a husband asserts, he has no current source of income, the Court must consider his educational background and earning potential while determining maintenance.

##### (ii) **Bhupendra Singh Notey vs. Gagandeep Kaur (2025)**<sup>1122</sup>

In this case, the Court stated "remaining unemployed is one thing and sitting idle having qualification and prospect to earn is other thing and if a husband being well qualified sufficient enough to earn sits idle only to shift the burden on the wife and expects 'dole' by remaining entangled in litigation should not only be deprecated, but also be discouraged since law never helps indolent, so also idles & does not intend to create an army of self-made lazy idles" This highlighted that hiding behind the shield of unemployment cannot be adopted by a husband to excuse them from making maintenance payments to his wife and children.

<sup>1117</sup> (2015) 6 SCC 353.

<sup>1118</sup> <https://www.sconline.com/blog/post/2021/11/15/can-wife-claim-maintenance-under-s-125-crpc-where-she-as-well-as-husband-had-spouses-living-at-the-time-of-alleged-marriage/> (Last Accessed on 15 April 2025).

<sup>1119</sup> (2014) 16 SCC 715.

<sup>1120</sup> (2021) 2 SCC 324.

<sup>1121</sup> (2024) SCC Online SC 1724.

<sup>1122</sup> (2025) SCC OnLine Ori 589.

### 3.3 *Right to Maintenance if assets are held in the husband's parents' name*

Maintenance depends on the husband's means, including actual income or earning capacity, even if nominally earned through a family business or property.<sup>1123</sup> Courts generally refuse to treat purely parental assets as the husband's means. The Punjab and Haryana High Court stated that property or income exclusively in the parents' name or acquired by them is not attached for the daughter-in-law's maintenance calculations. Only when parental assets include the husband's inherited or benami share can they be treated as his effective estate.<sup>1124</sup>

It is also stated that if the husband directly or indirectly benefits from property held by parents, that may include business income, HUF income, allowances, or secret benami holding, may be treated as part of his 'means.' Notably, the Allahabad High Court<sup>1125</sup> held that 'means includes earning capacity,' so the husband's capacity (even via a family business) to earn is counted. Moreover, if a husband conceals assets or refuses to disclose income through the affidavit of assets during divorce proceedings, courts will draw adverse inferences under the Evidence Act and raise his maintenance liability. The husbands are warned not to play poor and will have presumed means if they portray dependence on parents.

In the case of *Bashir Khan vs. Ishrat Bano (2024)*,<sup>1126</sup> it was stated that the father-in-law is not automatically liable under Section 125 CrPC for a daughter-in-law's maintenance. As the scope of this section cannot be stretched to cover in-laws, a wife may only claim from her husband's means under the CrPC, though Hindu law provisions like HAMA or the DV Act may impose separate obligations. Even in the case of *Darshan Singh vs. Mani (2016)*,<sup>1127</sup> the Punjab and Haryana High Court refused the claim to

occupy the father-in-law's self-acquired property as 'maintenance.' It noted that 'during subsistence of marriage, maintenance is the personal obligation of the husband' and held that parental property cannot be attached for the wife.

The principles laid down by the courts over the years explain how, during the process of passing a decree for maintenance, the courts look at beneficial ownership and not just the legal title. The separate identity concept of transferring assets to parents/family to avoid the liability may backfire for the husband and his family. Transfers of assets into parents' names (even if orchestrated by the husband) will not easily shield him from maintenance, as courts look at the substance of control and benefit as well. The presumption that where the husband enjoys the benefits of family assets, he can contribute to maintenance, is also taken into consideration. If the husband truly has no independent income, and the assets legitimately belong to his parents, then, except in the case of a widow, maintenance cases after his death, those parental assets are generally off-limits for the wife's support. To have smooth applicability of these provisions, the courts now demand detailed affidavits on income, expenditure, assets, and liabilities from both parties.

## 4. PRACTICAL CHALLENGES FOR WIVES

### 4.1 *Statutory Framework and Disclosure Requirements*

As discussed, wives can claim maintenance through provisions of the CrPC, HMA, or even the PWDVA. The court established the precedent for full disclosure of a spouse's income and assets in *Rajesh vs. Neha (2020)* that mandated both parties to submit an "Affidavit of Disclosure of Assets and Liabilities." Filing these affidavits allows an objective assessment of an individual's income/expenditure to calculate maintenance at the interim stage of proceedings. If the husband delays or refuses to furnish his affidavit, the court may proceed on the wife's claims alone and may strike off his

<sup>1123</sup> Dhani Ram vs. Ram Dei AIR 1953 ALL 320.

<sup>1124</sup> AIR 2002 SC 1279.

<sup>1125</sup> AIR 1953 ALL 320.

<sup>1126</sup> 2024 SCC OnLine MP 7077.

<sup>1127</sup> AIR 2016 SC 253.

defence.<sup>1128</sup> However, the wife's lawyer may file formal discovery requests under the Code of Civil Procedure (CPC) 1908<sup>1129</sup> or interrogatories about the spouse's salary, businesses, bank accounts, etc., and move the court to summon third parties like banks, employers, the Income Tax department, etc., for verification of these claims. Income tax returns, PAN, and bank records are considered prime evidence. The court can even obtain sealed IT records or require production of past returns, salary slips, and audited accounts if businesses are involved.

#### 4.2 Burden of Proof and Inferences

As per the Indian Evidence Act 1872 (IE Act), when any fact is 'especially within the knowledge'<sup>1130</sup> of the person, this places the burden of proof on the person. Whereas the Delhi High Court has stressed that each spouse's income is 'within their personal knowledge,' and so the spouse claiming maintenance may rely on this section<sup>1131</sup> to shift the onus. In other words, if a husband alleges that he has no income or that the property is not his, the court may require him to prove that fact.

The Court in such cases<sup>1132</sup> may apply adverse inference principles where the unexplained concealment can be viewed against the concealing party. For instance, if a husband dramatically downplays his earnings but maintains a lavish lifestyle, the court may impute income based on the standard of living. This 'doctrine of imputed income' considers education, family background, and lifestyle. The High Court of Delhi has even remarked that a father had 'significantly concealed his actual income and assets...to evade paying the appropriate maintenance,' implying a presumption that hidden wealth exists when not

disclosed.<sup>1133</sup> This proves that a party caught lying can face costs, contempt, or even perjury.

#### *Shirish H. Garg vs. Nidhi S. Garg (2011) 5 Bom CR 372*

This landmark case laid down principles of imputing hidden income by the husband where the husband was a businessman and showed only a small portion of his actual earnings as his income. The Court noted multiple business, bank withdrawals, employees' PF payments, insurance, and property taxes as evidence of large, undisclosed income. Replying to this evidence, the court arrived at a reasonable figure of income for maintenance, rejecting the husband's claim as conjecture.<sup>1134</sup> The judgment held that interim maintenance may be based on such an estimation when true income is suppressed.

#### 4.3 Practical Strategies that are adopted

A wife should gather all available evidence of her husband's finances, including his Income Tax returns, share allotment letters, and witnesses who can testify to his businesses or lifestyle. She can file an urgent application to produce documents or invoke CPC discovery. However, the Courts commonly require both spouses to swear to their assets, by way of affidavit, and any misstatement that opens the door to inference of hidden wealth.

In oral arguments, counsel may highlight discrepancies between the husband's claimed income and observable wealth. Ultimately, Indian courts have shown they will look beyond formal titles, and if the husband lives as if he is a wealthy individual but still denies it, the court may impute a higher income.

<sup>1128</sup> <https://www.lexology.com/library/detail.aspx?g=8771143f-cc5c-4725-9a1d-1ebb920a97b8#:~:text=,than%20two%20adjournments%20to%20file> (Last Accessed on 11 August 2025).

<sup>1129</sup> Order XI, Code of Civil Procedure 1908

<sup>1130</sup> Section 106 Indian Evidence Act 1872.

<sup>1131</sup> *Ibid.*

<sup>1132</sup> *Shirish H. Garg vs. Nidhi S. Garg (2011) 5 BomCR 372*

<sup>1133</sup> <https://lawchakra.in/high-court/fathers-duty-to-maintain-child/?amp=1#:~:text=The%20court%20found%20that%20the,the%20rightful%20amount%20of%20maintenance> (Last Accessed on 11 August 2025)

<sup>1134</sup> <https://www.shoneekapoor.com/shirish-h-garg-vs-nidhi-s-garg/#:~:text=stand%20trial%20that%20even%20more,conjunctures%20must%20therefore%20be%20rejected> (Last Accessed on 12 August 2025)

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**CONCLUSION**

The reflection of maintenance and alimony in India has been interpreted differently from the ancient period to the present world. The role of personal laws, religious beliefs, and evolving judicial interpretations has shown us that the prima facie focus of these subjects should be according to the change in mindset of society; no rigid rule shall be applied to understand this issue. While the bare provisions do recognize the importance of the wife's right to be maintained by her husband after separation or divorce, it also provides a thin line of measures the court shall keep in mind to calculate the remedy to be granted to the wives without burdening the husbands. Problems such as concealment of income, asset transfers to parents, or misuse of loopholes, which act as an escape from the liability for the husbands, are critically evaluated by the court these days. Through their recent judgments, the court has strengthened this framework to avoid such escapes when husbands take a defence of not being the owner of the property. The courts now look beyond the legal ownership to determine beneficial control. However, India still lags in recognising foreign jurisprudence, such as constructive trust and alter ego, which could protect the financial rights of women to a greater extent.

Therefore, it is seen that Indian courts have continuously evolved with time and performed uniform practices seen in the rest of the world by prioritizing substance over form. Preventing husbands from evading liability through artificial transfers and ensuring fairness across cases. Ultimately, maintenance is not a mere legal obligation but a tool given to us for social justice that is aimed at ensuring that no woman, post-divorce or even separation, is pushed into destitution or forced compromises.