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MAINTENANCE OF WOMEN UNDER HINDU AND MUSLIM LAW IN INDIA: A COMPARATIVE STUDY WITH SPECIAL REFERENCE TO SECTION 125 CRPC

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Abstract

Across personal law boundaries, maintenance in Indian family law serves as a secular, welfare-oriented remedy to prevent destitution of wives, divorced women, children, and parents. This paper examines in detail the scheme of maintenance for women under Hindu and Muslim law, analyses the interface with Section 125 of the Code of Criminal Procedure, 1973 (CrPC), and critically discusses leading Supreme Court decisions such as Shah Bano, Danial Latifi, Shamim Ara, Bhagwan Dutt, Chand Dhawan and Rajnesh v. Neha. In light of Articles 14, 15(3), and 21 of the Constitution, as well as recent jurisprudence affirming Muslim divorced women's right to claim maintenance under Section 125 despite the 1986 Act, it concludes with a normative evaluation and reform recommendations.

Keywords – Maintenance, Stridhan, Constitutional Infusion, Substantive Right, Relief

Introduction

Indian family law operates through a distinctive dual structure in which religion based personal laws governing marriage, divorce, maintenance and succession coexist with secular, uniformly applicable legislation such as the Code of Criminal Procedure, 1973 (particularly Section 125) and the Protection of Women from Domestic Violence Act, 2005, thereby creating multiple and sometimes overlapping maintenance remedies in favour of women. In this pluralistic framework, Hindu women access maintenance primarily through a codified regime comprising the Hindu Marriage Act, 1955—providing for interim and permanent alimony—and the Hindu Adoptions and Maintenance Act, 1956—conferring a substantive right to be maintained during marriage and, in defined circumstances, while living separately—supplemented by monetary relief under the DV Act and the secular safety

net of Section 125 CrPC. By contrast, Muslim women's entitlements continue to be shaped by uncodified classical Islamic principles of nafaqah and iddat as well as the Muslim Women (Protection of Rights on Divorce) Act, 1986, which articulates a right to "fair and reasonable provision and maintenance" within the iddat period, but whose scope has been read expansively by the Supreme Court so as to safeguard divorced Muslim women's ability to claim maintenance beyond iddat and to simultaneously invoke Section 125 as a religion neutral remedy. This coexistence of personal law based rights with secular statutory protections raises the central research problem of how far these parallel frameworks, taken together, effectively secure women's basic financial support after marital breakdown or desertion and whether the differential treatment they produce between Hindu and Muslim women can be reconciled with the

constitutional guarantees of equality before the law, non-discrimination and special protection for women under Articles 14, 15(1), 15(3) and 21 of the Constitution.

The concept and goals of maintenance

The concept of maintenance in Indian family law fundamentally embodies the principle of familial obligation translated into a legally enforceable right, ensuring that dependants—primarily wives, children and elderly parents—are provided with essential necessities such as food, clothing, shelter, medical care, education (for children) and other incidental expenses that enable them to sustain a standard of living consonant with the social and economic status of the family from which they derive support. This provision combines ancient customary duties rooted in Hindu, Muslim, and other personal laws with modern statutory imperatives of social welfare to protect against penury, vagrancy, and the dehumanizing effects of destitution. It is not intended to grant luxury or extravagance. This framework is built on Section 125 of the Code of Criminal Procedure, 1973 (CrPC), which provides a secular, religion-neutral remedy that allows a Judicial Magistrate to direct any person who has enough money to pay a monthly allowance to a wife who is unable to support herself (including a divorced wife who has not remarried), legitimate or illegitimate minor children, unmarried daughters, and indigent parents. Designed as a summary proceeding that is quick, cheap, and free of the rigors of a full civil trial, Section 125 puts preventive justice ahead of punitive intent. It requires family support to avoid the social threat of hunger and poverty that plagued colonial-era concerns under Section 488 CrPC. Legal jargon, like that used in *Bhagwan Dutt v. Kamla Devi* (1975), have clarified that maintenance quantum must reflect a "modest" yet dignified lifestyle, factoring in the husband's income, the claimant's needs, local living costs and inflation, while rejecting token payments that mock the provision's humanitarian core.

In a pluralistic society marked by diverse personal laws, the objectives of maintenance encompass broader objectives of social justice, gender equity, and family stability in addition to merely providing economic relief. By imposing a statutory duty on those with "sufficient means" to prevent neglect or refusal, Section 125 and cognate provisions like Sections 24-25 of the Hindu Marriage Act, 1955 (HMA), Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (HAMA) and monetary relief under the Protection of Women from Domestic Violence Act, 2005 (DV Act), aim to deter marital desertion, shield vulnerable women from post-divorce penury and uphold the welfare of minor children irrespective of legitimacy or religion. This remedial architecture addresses the asymmetry of power in traditional marriages, where women often forgo careers for homemaking, by ensuring interim (*pendente lite*) support during litigation and permanent alimony where applicable, while harmonising with personal laws—Hindu statutes codify absolute rights tempered by disqualifications like unchastity, whereas Muslim law limits *nafaqah* to the *iddat* period but yields to Section 125's overriding secular mandate post-Shah Bano. The Supreme Court has repeatedly underscored maintenance's non-charitable essence, as in *Rajnish v. Neha* (2020), mandating disclosure of assets to curb forum-shopping across overlapping forums (CrPC, HMA, DV Act) and setting off prior awards to prevent double-dipping, thereby streamlining enforcement through civil execution or penal sanctions under Section 125(3) for wilful default.

Elevating maintenance from a discretionary benevolence to a constitutional entitlement, Indian jurisprudence has firmly anchored it within Article 21's expansive guarantee of the right to life and personal liberty, interpreting "life" to include living with human dignity—a *sine qua non* encompassing shelter, nutrition, clothing and medical aid without which existence is mere animal survival. landmark decisions like the *Mohd Ahmed Khan v. Shah Bano Begum* (1985) and *Danial Latifi v. Union of India* (2001)

affirm that denying maintenance to a destitute wife contravenes this dignity imperative, transcending personal law to enforce uniform social security. This amendment to the constitution rejects paternalistic notions of maintenance as "grace" from the husband and instead views it as a result of the reciprocal duties of marriage and the state's policy against gender discrimination in accordance with Articles 14, 15(3), and 39(a). Guidelines from *Rajnish v. Neha* made this even more concrete by making maintenance start at the date of application (to punish delays), taking into account unpaid domestic labor in the quantum assessment, and giving children's well-being top priority. As a result, maintenance has grown into a solid foundation of substantive equality and preventative justice.

Sources of maintenance law in India

¹⁷⁹⁰ In India, women's maintenance is governed by a complicated and multifaceted legal structure that includes secular statutes with universal application and religion-specific personal laws. This creates a lot of "overlapping jurisdiction," which allows claimants to seek relief in multiple forums and enactments at the same time or in different order. This pluralistic framework reflects India's constitutional commitment to personal laws under Article 44 (non-justiciable Uniform Civil Code aspiration), while also incorporating welfare-oriented secular remedies to ensure that no woman, regardless of faith, is left without a livelihood. The cornerstone secular provision is Sections 125–128 of the Code of Criminal Procedure, 1973 (CrPC), which empowers Magistrates to order maintenance for wives (including divorced women who have not remarried), children and parents from persons with sufficient means who neglect or refuse support, backed by summary procedure and penal enforcement for default. Complementing this are civil remedies under the Hindu Marriage Act, 1955 (HMA)—Sections 24

(pendente lite maintenance and expenses) and 25 (permanent alimony post-decree)—and the Hindu Adoptions and Maintenance Act, 1956 (HAMA)—Sections 18 (wife's right to maintenance during marriage or separate residence on grounds like cruelty) through 23 (quantum factors). The Special Marriage Act, 1954 (Sections 36–37) mirrors HMA provisions for secular or inter-faith marriages, while the Protection of Women from Domestic Violence Act, 2005 (DV Act)—Sections 18–23—provides residence orders, monetary relief and protection in cases of economic abuse, enforceable by Magistrates irrespective of religion. The Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWPRD Act), which mandates "reasonable and fair provision" within iddat but has been judicially expanded beyond it, is the statutorily channel for Muslim women's classical Islamic principles of nafaqah (maintenance during a valid marriage), iddat (post-divorce support for three menstrual cycles), and mahr (dower). This multiplicity of sources—spanning criminal (CrPC), civil matrimonial (HMA/SMA), welfare-specific (HAMA/DV Act) and personal law enactments (MWPRD Act)—inevitably produces overlapping remedies, forum-shopping, conflicting orders and procedural delays, as a single claimant might invoke Section 125 CrPC before a Magistrate, Section 24 HMA in family court pendente lite, DV Act monetary relief

Maintenance of women under Hindu law

Hindu law now largely rests on codified statutes that separately regulate maintenance during subsistence of marriage, pendente lite, and as permanent alimony post-decree. HAMA focuses on the substantive right of a Hindu wife (and other dependants) to be maintained, while HMA provides for litigation-related and post-decree support; both operate in addition to remedies under Section 125 CrPC and the DV Act.

¹⁷⁹⁰ (No date a) *Ensuring equity between parties :maintenance and matrimonial property*. Available at: https://nija.gov.in/Concluded_Programmes/2023-24/SE-30_Dec_2023_PPTs/2.Maintenance%20and%20matrimonial%20property.pdf (Accessed: 17 February 2026).

Hindu Marriage Act 1955

Maintenance under Hindu Law: Comprehensive Framework

¹⁷⁹¹Maintenance under Hindu law represents a codified evolution from ancient Dharmashastric principles—where a wife's right to *bhriya* (support) was an inherent marital incident—to a structured statutory regime primarily governed by the Hindu Marriage Act, 1955 (HMA) and the Hindu Adoptions and Maintenance Act, 1956 (HAMA), supplemented by the Protection of Women from Domestic Violence Act, 2005 (DV Act) and the secular safety-net of Section 125 CrPC. Under HAMA Section 18, a Hindu wife enjoys an unqualified right to be maintained by her husband during her lifetime, extendable to separate residence and maintenance without forfeiting support if the husband is guilty of desertion (for two years), cruelty (physical or mental), leprosy, religious conversion, concubinage, or any other justifiable cause; disqualifications apply only for unchastity or apostasy, reflecting a conditional yet protective absolute duty rooted in the sacramental view of Hindu marriage. **Section 19 HAMA** further mandates maintenance for a widowed daughter-in-law by her father-in-law if she lacks independent means and chooses not to remarry, while **Sections 20–22** extend obligations to children, aged/disabled parents and other dependants, with **Section 23** prescribing quantum factors: parties' status, reasonable wants, claimant's independent property/income, husband's means/obligations and conduct—principles judicially mirrored in CrPC maintenance awards. Complementing this substantive right, **HMA Section 24** provides pendente lite maintenance and litigation expenses during matrimonial proceedings (restitution, judicial separation, nullity, divorce), payable monthly and determined by relative incomes, needs and lifestyle, ensuring financial parity in court battles; **Section 25**, more controversially, empowers permanent alimony

(lump sum or periodic) upon "any decree" under HMA Chapters IX–XIII or thereafter, modifiable on changed circumstances but, per *Chand Dhawan v. Jawaharlal Dhawan* (1993), not standalone absent a substantive matrimonial relief like divorce.

Hindu Adoptions and Maintenance Act, 1956: Right to Maintenance under Section 18

¹⁷⁹²The Hindu Adoptions and Maintenance Act, 1956 (HAMA) codifies the ancient Hindu law principle of a wife's inherent right to maintenance as an indispensable concomitant of marriage, declaring under Section 18(1) that a Hindu wife shall be entitled to be maintained by her husband during her lifetime—an absolute, lifelong obligation irrespective of whether she lives with him or separately. This right becomes actionable for separate residence and maintenance under Section 18(2) when the husband is guilty of specific matrimonial faults: desertion for two continuous years without reasonable cause; cruelty (physical or mental); suffering from virulent leprosy; renouncing Hinduism by conversion to another religion; keeping a concubine in the matrimonial home or elsewhere (except where customarily tolerated); or "any other cause" with which cohabitation has become untenable—grounds mirroring but predating Hindu Marriage Act fault provisions. Critically, Section 18(3) carves out disqualifications: the wife's right to *separate residence and maintenance* (though not basic support) is forfeited if she is unchaste (post-separation adultery) or ceases to be Hindu by conversion, embedding a conditional moral framework rooted in traditional notions of pativrata (devoted wife) but subject to liberal judicial construction—courts require clear proof of unchastity beyond innuendo, and apostasy rarely invoked in modern practice. This structure preserves marriage's rehabilitative potential while empowering exit from intolerable unions without dissolving the sacramental tie,

¹⁷⁹¹ (No date a) *India code: Hindu marriage act, 1955*. Available at: <https://www.indiacode.nic.in/handle/123456789/1560?locale=en> (Accessed: 17 February 2026).

¹⁷⁹² (No date a) *1 the Hindu adoptions and maintenance act, 1956*. Available at: https://www.indiacode.nic.in/bitstream/123456789/21406/1/the_hindu_adoptions_and_maintenance_act,1965.pdf (Accessed: 17 February 2026).

complementing divorce remedies under HMA and providing a standalone civil claim enforceable in family courts.

Section 23 HAMA: Factors for Maintenance Quantum and Overlap with Other Laws

Section 23(1) HAMA prescribes a nuanced, equity-driven formula for courts fixing maintenance quantum, mandating consideration of: (a) the parties' position and status (social standing, lifestyle); (b) reasonable wants of the claimant; (c) claimant's independent property/income (relevant to quantum but not absolute bar); (d) husband's reasonable wants and capacity to earn; and (e) his other obligations/liabilities—factors judicially adopted verbatim in Section 125 CrPC awards per *Bhagwan Dutt v. Kamla Devi* (1975) and *Rajnish v. Neha* (2020). Section 23(2) permits alteration, cancellation or variation of orders upon material change of circumstances (e.g., remarriage, income surge), while Section 23(3) deems maintenance in default of compliance a charge on the husband's estate, facilitating attachment and recovery. Sections 19–22 HAMA extend allied rights: widowed daughters-in-law claim from in-laws (Section 19); minor children, unmarried daughters and parents from those they would inherit from (Sections 20–22). This substantive framework operates alongside HMA Sections 24/25 (pendente lite/post-decree alimony), DV Act monetary relief, and CrPC Section 125, enabling strategic multiplicity—e.g., HAMA for fault-based separation without divorce, CrPC for urgency—harmonised by Supreme Court mandates for asset disclosure and set-offs to curb abuse.

Judicial Evolution and Constitutional Infusion

HAMA's fault-conditionality has mellowed through progressive Supreme Court gloss: unchastity demands strict proof (*Dwarika Prasad v. Dwarkeshwari*, 1975); wife's earning capacity doesn't negate need if insufficient for status-quo dignity (*Bhagwan Dutt*); quantum benchmarks now factor inflation, homemaking value and 25% husband's net income (*Rajnish*).

Constitutionally, HAMA aligns with Article 21's dignity-right (*Danial Latifi* spillover) and Article 15(3)'s women-protection, rejecting patriarchal caprice—e.g., no maintenance denial for "lifestyle crimes" absent Section 18(3) bars. Critiques note archaic moral disqualifiers clashing with no-fault divorce trends, yet HAMA endures as Hindu women's most comprehensive maintenance charter, blending welfare absolutism with calibrated conditionality.

Protection of Women from Domestic Violence Act, 2005: Scope and Remedies

¹⁷⁹³The Protection of Women from Domestic Violence Act, 2005 (DV Act) marks a watershed in Indian family law by introducing comprehensive civil and quasi-criminal remedies against domestic violence, defined expansively under Section 3 to include not just physical or sexual abuse but also verbal/emotional harm, economic abuse (deprivation of financial resources, gifts, stridhan or maintenance), and denial of shared household rights—applicable to any woman in a domestic relationship with the respondent, whether marital, live-in or familial. Critically, the Act transcends personal law boundaries, safeguarding Hindu, Muslim, Christian and other women alike through "monetary relief" (Section 20), protection orders (Section 18), residence orders (Section 19) and compensation (Section 22), all adjudicated summarily by Magistrates of the first class with police assistance for enforcement. Section 20 empowers the court to direct payment for medical expenses, loss of earnings, property damage, and crucially, "maintenance for the aggrieved person [and her children] as well as the expenses of the proceeding," calibrated to the lifestyle enjoyed during the relationship and explicitly including child maintenance, loss of homemaking capacity and dowry-related economic violence. Residence orders under Section 19 prohibit ouster from the shared household (ancestral,

¹⁷⁹³ (No date a) *India code: Protection of Women from Domestic Violence Act, 2005*. Available at: <https://www.indiacode.nic.in/handle/123456789/2021> (Accessed: 17 February 2026).

rented or owned) and restrain alienation, addressing shelter rights often neglected in traditional maintenance claims, while protection orders bar further violence, stalking, communication harassment or asset disposal. Procedurally swift—hearings within 3 days of service, ex-parte interim relief possible—this criminal-court mechanism complements civil family courts, with appeals to Sessions Courts and civil remedies preserved, positioning the DV Act as an urgent, abuse-triggered safety net rather than a general maintenance statute.

This framework substantially overlaps with maintenance under HMA Section 24/25, HAMA Section 18, CrPC Section 125 and personal laws, as monetary relief mirrors alimony while residence orders echo shelter claims, enabling parallel proceedings that risk double recovery and conflicting quanta. The Supreme Court in *Rajnish v. Neha* (2020) confronted this "mosaic" head-on, classifying DV Act orders within the unified maintenance regime alongside CrPC/HMA/HAMA/SMA, mandating: (i) full disclosure of all pending/prior maintenance claims via affidavits of assets, income, liabilities and lifestyle; (ii) judicial notice and set-off of sums awarded under other statutes to prevent over-compensation; (iii) uniform factors for quantum—parties' status, reasonable needs, respondent's capacity post-deductions, inflation, children's welfare and unpaid domestic labour value; (iv) 60-day timelines for interim relief with reasoned orders; and (v) enforcement prioritising civil attachment over jail unless willful default proven. Subsequent rulings like *Hiralal v. State of Rajasthan* (2023) reinforced that DV Act maintenance binds in matrimonial proceedings, while *Anubha v. Vikas Aggarwal* clarified no automatic bar to CrPC claims post-DV relief. For Muslim women, the Act overrides MWPRD Act limits, treating economic abuse (e.g., iddat denial) as actionable independently of *Shah Bano* glosses.

The DV Act's strength lies in its victim-centric, intersectional approach—recognising live-in partners, serial monogamists and dependent kin—backed by Protection Officers, service

providers and counsellors (Sections 8–11), yet faces critique for Magistrate overload, misuse allegations (though *Rajnish* demands evidence-based orders), uneven rural enforcement and no inflation indexation. Constitutionally anchored in Articles 14, 15(3), 21 and 39(a), it operationalises dignity against marital power imbalances, with residence rights challenging patrilocal norms and monetary relief valuing intangible losses like child-rearing. Integrated with *Rajnish* guidelines, the Act harmonises the pluralistic maintenance landscape, ensuring shelter-cum-support without forum-shopping, though a unified family court procedure could further streamline this progressive bulwark against gendered economic violence.

Overlapping Remedies and Forum Choice

The coexistence of multiple statutory frameworks—Hindu Adoptions and Maintenance Act, 1956 (HAMA), Hindu Marriage Act, 1955 (HMA), Protection of Women from Domestic Violence Act, 2005 (DV Act), and Section 125 CrPC—creates a landscape of overlapping remedies enabling a Hindu wife (or similarly placed woman) to pursue parallel, successive, or strategically sequenced maintenance claims across civil family courts, Magistrates, and Sessions Courts, often yielding inconsistent quanta, enforcement conflicts, and procedural arbitrage. Under HAMA Section 18, she may seek separate maintenance without marital dissolution before family courts; HMA Sections 24/25 offer pendente lite and permanent alimony during/after matrimonial suits (restitution, divorce); DV Act Sections 19–20 provide residence orders and monetary relief via Magistrates for abuse-linked needs; while CrPC Section 125 delivers summary secular support enforceable penal-wise—all potentially invoked concurrently without statutory bar, as each targets distinct facets (substantive right, litigation costs, shelter, destitution prevention). This multiplicity empowers victims through forum choice and layered safeguards but breeds "maintenance roulette": claimants suppress prior awards, respondents plead

poverty across dockets, and courts issue uncoordinated orders (e.g., ₹20,000 CrPC + ₹15,000 DV = unadjusted double recovery), exacerbating delays, legal costs, and enforcement chaos in India's overburdened judiciary.

The Supreme Court in *Rajnish v. Neha* (2020) confronted this "paradoxical proliferation" head-on, diagnosing multiplicity of proceedings, conflicting orders, and over-compensation as systemic vices undermining maintenance's social-justice telos, and promulgated binding nationwide guidelines to rationalise the regime without curtailing statutory options. Parties must file detailed affidavits enumerating all pending/prior maintenance claims (under CrPC/HMA/HAMA/DV/SMA), assets (movable/immovable, income sources, investments), liabilities, lifestyle (pre-separation status, expenses), and dependents; courts are duty-bound to take judicial notice of existing orders, effect proportionate set-offs/adjustments (e.g., crediting DV interim against HMA final alimony), and avoid double-dipping while preserving each statute's remedial niche—CrPC for urgency, DV for abuse, HMA for matrimonial equity. Interim relief timelines cap at 60 days with reasoned quanta reflecting uniform factors (parties' status, reasonable needs, respondent's capacity post-deductions/taxes, inflation/CPI, children's welfare, homemaking value); enforcement prioritises civil attachment/sale over jail (Section 125(3)); and family courts consolidate where feasible under the Family Courts Act, 1984. Subsequent rulings like *Anubha v. Vikas Aggarwal* (2023) affirm no automatic CrPC bar post-DV relief, ensuring harmonisation preserves access while curbing abuse.

This judicial blueprint strikes a delicate equilibrium: remedial breadth intact (parallel claims permissible if disclosed), abuse forestalled (mandatory transparency, set-offs), and constitutional dignity operationalised across forums, transcending personal law silos. Yet challenges linger—non-compliance with

affidavit mandates, rural Magistrates' *Rajnish* ignorance, quantum disparities persisting absent statutory formula—underscoring need for legislative consolidation: a unified Maintenance Code mandating single-window disclosure, automatic indexation, and pan-India databases linking orders, without supplanting personal laws' substantive contours. Till then, *Rajnish* endures as pragmatic federalism, transforming overlap from pathology to potency in women's financial empowerment.

Leading Hindu maintenance decisions

¹⁷⁹⁴**Neha Tyagi v. Lt. Colonel Deepak Tyagi** (Civil Appeal No. 6374 of 2021, Supreme Court of India, decided on November 24, 2021) is a seminal judgment addressing the misuse of maintenance laws under Section 125 CrPC and Section 14 of the Hindu Marriage Act, 1955 (HMA), particularly the practice of securing excessive interim maintenance that cripples the respondent's financial capacity, especially salaried professionals like army officers. The case arose from a matrimonial dispute where the wife, Neha Tyagi (appellant), had filed complaints alleging the husband's extra-marital affairs, plural marriage, and involvement in a "honey trap" racket, lodging these with Army authorities, the Prime Minister's Office, and Defence Ministry between 2012–2015. Army inquiries (Ex.11, Ex.12) exonerated Lt. Col. Deepak Tyagi (respondent), finding the allegations baseless due to lack of evidence like girls' addresses or witnesses. The husband then instituted divorce proceedings under HMA Section 13(1)(ia)/(ib) before the Family Court, Jaipur (Case No. 1496/2016), claiming cruelty and desertion. The wife countered with a maintenance application under HMA Section 24, securing an interim order of ₹27,500 per month—27.5% of the husband's salary—directly deducted by Army authorities under Section 90(1) Army Act, 1950, leaving him with barely

¹⁷⁹⁴ (No date a) 2023 INSC 981 1 reportable in the Supreme Court of India. Available at: https://api.sci.gov.in/supremecourt/2023/38285/38285_2023_11_1505_48074_Judgement_06-Nov-2023.pdf (Accessed: 17 February 2026).

subsistence income and compelling him to borrow for essentials.

The Family Court, Jaipur, and Rajasthan High Court (Jaipur Bench, S.B. Mat. Appeal No. 25/2019, decided September 18, 2019) held the wife's serial false complaints as "grossest form of cruelty," warranting denial of interim maintenance under HMA Section 24 and exemplary costs of ₹50,000, observing that her unsubstantiated smears (infidelity with named women sans proof, national security threats) irreparably tarnished the husband's military career and integrity. On appeal, a Division Bench of the Supreme Court (Justices Indira Banerjee and J.K. Maheshwari) dismissed the wife's challenge, reinforcing that maintenance is not an automatic entitlement but conditional on the claimant's conduct; persistent, proven-false allegations against a uniformed officer constitute matrimonial cruelty disqualifying relief. Critically, the Court capped interim maintenance at 25% of the husband's gross salary across statutes (HMA Section 24, CrPC Section 125, DV Act), cautioning against "impoverishing" orders exceeding one-third net income that render the respondent destitute, violate natural justice, and incentivise prolonged litigation. It mandated disclosure of prior maintenance claims/assets, set-offs for overlapping awards (*Rajnish v. Neha* synergy), and Army/non-Army salary differentiation, while upholding the divorce on cruelty grounds post-exoneration evidence.

Significance and Doctrinal Impact: This ruling tempers *Rajnish v. Neha's* pro-claimant tilt by introducing conduct-based checks, defining "frivolous/vexatious" complaints (e.g., unsubstantiated infidelity to superior officers/PMO) as cruelty per se, disentitling maintenance even interim-wise under HMA Section 24 or CrPC Section 125(4) (refusal without cause). It addresses salaried respondents' plight—post-deduction penury forcing loans/begging—laying down the 1/3rd net salary ceiling (precedents: *Jasbir Kaur Sehgal v. District Judge, Dehradun*), rejecting lifestyle parity where it bankrupts the payer, and

prioritising children's needs sans spousal excess. For armed forces personnel, it protects professional reputation against weaponised complaints, directing inquiries' evidentiary weight in cruelty assessments. Critiqued for potential victim-chilling (false accusation thresholds), it harmonises welfare with equity, curbing Section 125/DV Act misuse amid rising matrimonial litigation (NCRB data: 1.1 lakh cases annually) and reinforces *Rajnish* disclosure mandates. Post-2021, High Courts cite it to moderate excessive awards, evolving maintenance from presumptive charity to calibrated dignity-right, constitutionally balanced under Article 21 for both spouses.

In **Bhagwan Dutt v. Kamla Devi**, the Supreme Court clarified that while a wife's separate income does not bar her claim under the maintenance provisions, it is a relevant factor in determining the quantum of maintenance. The Court emphasised that the object of such provisions is to prevent vagrancy and destitution, and therefore the Magistrate must fix an amount enabling the wife to maintain a standard of living modestly consistent with the family's status, neither luxurious nor penurious. The judgment also distinguished between a wife's locus standi to claim maintenance and her entitlement to a particular amount, underlining the discretion of the court to calibrate quantum in light of both spouses' financial circumstances.

In **Chand Dhawan v. Jawaharlal Dhawan**, the Supreme Court addressed whether permanent alimony could be granted under Section 25 HMA when no substantive matrimonial relief (such as divorce, judicial separation, restitution of conjugal rights) had been decreed. The Court held that Section 25 is ancillary to the passing of a decree under Sections 9 to 13 HMA and does not create an independent substantive right to permanent alimony in the absence of such a decree, thereby limiting the scope of Section 25. This interpretation has been reaffirmed in later Supreme Court decisions, which clarify that matrimonial courts may grant permanent alimony only in connection with a decree under

HMA, though maintenance under HAMA, the DV Act or Section 125 CrPC remains independently available.

In **Rajnish v. Neha**, the Supreme Court issued comprehensive guidelines on maintenance, addressing overlapping jurisdiction, interim maintenance, criteria for determining quantum, the date from which maintenance is to be awarded, and enforcement of orders. The Court recognised that parties often evoke multiple statutes (HMA, HAMA, CrPC, DV Act, Special Marriage Act), resulting in conflicting maintenance orders, and directed that prior orders be considered and appropriately adjusted. It also endorsed the principle that maintenance should ordinarily be awarded from the date of application, a position later reiterated by subsequent Supreme Court decisions interpreting Section 125 CrPC.

Maintenance of women under Muslim Law

Maintenance rights for Muslim women in India originate in classical Islamic jurisprudence derived from the Quran, Hadith and major schools of fiqh (Hanafi, Maliki, Shafi'i, Hanbali), where the husband's duty of *nafaqah*—provision of food, clothing, shelter and medical needs—is obligatory during a valid subsisting marriage but strictly conditional on the wife's *nushuz*-free obedience, cohabitation and observance of marital duties; failure triggers suspension until reconciliation. Post-divorce, maintenance is limited to the *iddat* period (three menstrual cycles or three lunar months for non-pregnant women, delivery for pregnant), during which the husband must provide full support to ascertain paternity and facilitate reconciliation, after which classical doctrine shifts responsibility to the wife's *ashab al-arham* (sympathetic kindred) or waqf/charitable institutions, with *mahr* (prompt or deferred dower) serving as a one-time proprietary settlement rather than ongoing aliment. This framework, uncodified until the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWPRD Act), clashed sharply with secular statutes like Section 125 CrPC, igniting landmark litigation: *Shah Bano* (1985)

pierced personal law limits by awarding lifelong maintenance to a destitute divorcee, prompting the MWPRD Act's enactment to ostensibly confine husband's liability to *iddat* while mandating "reasonable and fair provision" (Section 3(1)(a)) payable within *iddat* but expansively interpreted in *Danial Latifi* (2001) as covering future needs.

The MWPRD Act, Sections 3–4, entitles a divorced Muslim woman to maintenance from her husband during *iddat*, prompt/deferred *mahr*, return of *stridhan*, and a lump-sum "fair and reasonable provision" for post-*iddat* sustenance, with residual liability on children/grandchildren or sharers in her estate if she remains indigent; failure triggers State Wakf Board support. *Danial Latifi v. Union of India* upheld the Act's validity by reading Section 3(1)(a) constitutionally under Articles 14/21, holding the provision must substantively secure the woman's future (not nominal *iddat* cash) though payable within *iddat*, effectively preserving *Shah Bano's* ratio while formalising personal-law primacy. *Shamim Ara* (2002) invalidated unilateral triple *talaq sans* arbitration/reconciliation, entitling women to maintenance until valid divorce proof; post-*Shayara Bano* (2017), instant *talaq's* nullity reinforces ongoing *nafaqah* claims. Section 125 CrPC remains concurrently available, as affirmed in recent Supreme Court rulings (2024), overriding MWPRD temporalities for destitute divorcees, with DV Act economic abuse remedies further bolstering access irrespective of *iddat* expiry.

This judicial-personal law interface tempers classical contingencies (obedience, cohabitation) with constitutional dignity, yet disparities persist unlike HAMA's absolute spousal right, Muslim maintenance hinges more on marital validity and divorce form, risking arbitrary *talaq* weaponisation despite reforms. Quantum reflects lifestyle, husband's means and local costs, harmonised via *Rajnish v. Neha* disclosures/setoffs, evolving *nafaqah* from conditional charity to enforceable equity while navigating Article 25 religious freedom tensions.

Muslim Women (Protection of Rights on Divorce) Act 1986

¹⁷⁹⁵The MWPRD Act was enacted by Parliament in 1986 to “nullify” or dilute the Supreme Court’s decision in *Shah Bano*, which had allowed a divorced Muslim woman to claim maintenance under Section 125 CrPC beyond iddat. Section 3(1)(a) of the Act entitles a divorced Muslim woman to “a reasonable and fair provision and maintenance” to be made and paid to her within the period of iddat, while Sections 3 and 4 provide that if she cannot maintain herself thereafter, her relatives who would inherit her property, and failing them the State Waqf Board, may be directed to pay maintenance. Although the text seemed to confine the husband’s responsibility to the iddat period, High Courts interpreted “fair and reasonable provision” expansively, and the Supreme Court in *Danial Latifi* later read the Act down to preserve Muslim women’s constitutional rights.

Mohd. Ahmed Khan v. Shah Bano Begum (1985)

In *Mohd. Ahmed Khan v. Shah Bano Begum*, the Supreme Court held that a divorced Muslim woman is entitled to maintenance under Section 125 CrPC if she is unable to maintain herself, thereby affirming the secular, religion-neutral character of Section 125. The Court rejected the contention that a Muslim husband’s liability is limited to *mehr* and iddat maintenance, holding that Section 125 overrides personal law to the extent necessary to prevent destitution. Political backlash against the decision led to the enactment of the MWPRD Act 1986, which attempted to restore a personal-law-based model but ultimately became the subject of constitutional challenge in *Danial Latifi*.^{alec+1}

¹⁷⁹⁵ (No date a) 1 the Muslim women (Protection of Rights on Divorce) act, 1986 Available at: [https://www.indiacode.nic.in/bitstream/123456789/15353/1/muslim_women_\(protection_of_rights_on_divorce\)_act_1986.pdf](https://www.indiacode.nic.in/bitstream/123456789/15353/1/muslim_women_(protection_of_rights_on_divorce)_act_1986.pdf) (Accessed: 17 February 2026).

Danial Latifi v. Union of India (2001)

¹⁷⁹⁶In *Danial Latifi v. Union of India*, the Supreme Court upheld the constitutional validity of the MWPRD Act by reading it harmoniously with Articles 14, 15 and 21 and with *Shah Bano*. The Court interpreted Section 3(1)(a) to mean that the husband’s obligation is to make a fair and reasonable provision for the future of the divorced wife, payable within the iddat period but not confined to that duration, thus ensuring she is not left destitute after iddat. The judgment emphasised that the Act cannot be construed to deprive Muslim women of the basic right to maintenance and must be read in a manner consistent with constitutional values of equality and dignity.

Shamim Ara and triple talaq jurisprudence

In *Shamim Ara v. State of U.P.*, the Supreme Court dealt with a Muslim woman who had sought maintenance under Section 125 CrPC but was denied on the ground that she had allegedly been divorced by triple talaq years earlier. The Court rejected a mere plea in the written statement of a previous triple talaq as sufficient proof of divorce, holding that talaq must be preceded by reasonable cause and attempts at reconciliation, and cannot be effectuated unilaterally without due process, thereby entitling the wife to maintenance until a valid divorce is established. This decision laid an important doctrinal foundation for later invalidation of instant triple talaq and reinforced the idea that Muslim wives cannot be arbitrarily divested of maintenance rights by unilateral divorces.

Recent Supreme Court approach to Muslim women’s maintenance

More recent Supreme Court jurisprudence has reaffirmed that divorced Muslim women can claim maintenance under Section 125 CrPC and that the MWPRD Act does not override this secular remedy. A 2024 decision held that a Muslim woman divorcee is entitled to

¹⁷⁹⁶ *Manupatra Academy* (no date a) *MANU_SC_0595_2001*. Available at: <https://www.manupatracademy.com/legalpost/manu-sc-0595-2001> (Accessed: 17 February 2026).

maintenance from her husband even after divorce under Section 125, and that the 1986 Act will not prevail over the secular law, extending this right to all Muslim women rather than only those still married. These developments mark a significant consolidation of the position that financial security of Muslim women is a matter of constitutional concern, not solely of personal law autonomy.

Section 125 CrPC: structure and scope

¹⁷⁹⁷Section 125 CrPC provides a summary, speedy and inexpensive remedy whereby a Magistrate may order a person with sufficient means to maintain his wife (including divorced wife), minor children, major children with physical or mental disability, and parents, if they are unable to maintain themselves. Proceedings under Section 125 are described as quasi-civil and quasi-criminal: while located in the CrPC and backed by penal sanctions for non-payment, their object is essentially to secure social justice and prevent vagrancy rather than to punish. The provision is religion-neutral, and courts have consistently held that personal law cannot defeat a claim under Section 125 where statutory conditions are satisfied.

Nature and beneficiaries

The Supreme Court and training materials on Section 125 emphasise that maintenance is a basic human right intended to prevent destitution of those who are otherwise dependent. The term “wife” in Section 125 includes a legally wedded wife, a woman divorced by such husband who has not remarried, and in light of case law, certain categories of women whose marital status was put in jeopardy by the husband’s conduct, though fraudulent or void marriages may be treated differently. Beneficiaries also include legitimate and illegitimate minor children, unmarried major daughters unable to maintain

themselves, and parents, reflecting a broad familial support obligation enforced by the criminal procedure system.

Conditions, defences and disqualifications

To obtain relief under Section 125(1), the applicant must establish that the respondent has “sufficient means”, has “neglected or refused” to maintain, and that the claimant is “unable to maintain” herself or himself. Section 125(4) prescribes disqualifications for wives, denying maintenance where the wife is living in adultery, refuses to live with her husband without sufficient reason, or they are living separately by mutual consent, a scheme reflected in recent Supreme Court and High Court dicta. Jurisprudence such as *Bhagwan Dutt* and later cases clarifies that the wife’s own income does not, by itself, make her “able to maintain herself” if it is insufficient to secure a modest standard consistent with the family’s status.^{sci+5}

Quantum, date of commencement and enforcement

Section 125(1) empowers the Magistrate to award “such monthly allowance as he thinks fit”, considering factors such as needs of the claimant, income and obligations of the respondent, and local cost of living. Supreme Court decisions, including *Rajnish v. Neha*, direct courts to consider inflation, standard of living during marriage, and to avoid token amounts that fail to secure real sustenance. Recent Supreme Court rulings reiterate that maintenance under Section 125 should ordinarily be made effective from the date of filing of the application rather than from the date of the order, so that the applicant does not suffer due to judicial delays and can recover arrears for the intervening period.

Enforcement is provided for under Section 125(3), which allows issuance of a warrant for levying the amount due and, in default, imprisonment up to one month for each month’s default. Courts stress that this penal consequence is an enforcement mechanism

¹⁷⁹⁷ (No date a) 1 *The code of criminal procedure, 1973* _____ arrangement of sections. Available at: https://www.indiacode.nic.in/bitstream/123456789/15272/1/the_code_of_criminal_procedure_1973.pdf (Accessed: 17 February 2026).

rather than the primary object, and that recourse to civil execution-like measures should be attempted before resorting to imprisonment.

Civil–criminal interface and standard of proof

The Supreme Court has clarified that proceedings under Section 125 are essentially civil in nature, though placed within the CrPC and backed by criminal sanctions for non-compliance. This means that the standard of proof is preponderance of probabilities rather than proof beyond reasonable doubt, and that strict rules of criminal procedure and evidence do not strictly govern such proceedings. Describing Section 125 as a measure of social justice, courts have insisted that it be interpreted liberally and purposively to achieve its objective, particularly in relation to vulnerable spouses and children.

Key jurisprudential developments under Section 125 CrPC

Section 125 jurisprudence has evolved from early decisions like *Bhagwan Dutt* and *Shah Bano* to recent rulings on overlapping jurisdictions and Muslim women's rights, steadily emphasising the secular, welfare-oriented character of the provision. Several cases also clarify procedural and substantive aspects such as date of commencement, effect of wife's income, and interaction with other maintenance statutes.

Chaturbuj v. Sita Bai and interpretation of “unable to maintain herself”

Later Supreme Court decisions, including *Chaturbuj v. Sita Bai* (referred to in recent commentary), explain that the expression “unable to maintain herself” does not require the wife to be absolutely destitute or physically on the street before she can claim maintenance. The test is whether the income available to her is sufficient for bare survival with dignity, viewed in the context of the husband's means and the standard of living enjoyed in the matrimonial home. This interpretation prevents husbands from evading

liability merely by pointing to some minimal or sporadic income of the wife.

Section 125 and Muslim divorced women: Shah Bano to recent rulings

Shah Bano established that Muslim divorced women fall within the protective ambit of Section 125 and that personal law cannot override this secular remedy, a position reaffirmed in later decisions reading the MWPRD Act in a constitutional light. The 2024 Supreme Court ruling reported in mainstream media expressly held that a Muslim woman divorcee is entitled to maintenance from her husband under Section 125 and that the MWPRD Act does not prevail over this secular law, extending this principle uniformly to all Muslim women. Collectively, *Shah Bano*, *Danial Latifi*, *Shamim Ara* and the recent decision signal that the Court treats financial security of divorced Muslim women as a constitutional imperative rather than a negotiable aspect of community personal law.

Guidelines on overlapping jurisdiction and date of maintenance: Rajnesh v. Neha and later cases

In *Rajnesh v. Neha*, the Supreme Court framed detailed guidelines on disclosure of assets, avoidance of conflicting orders, and co-ordination between maintenance proceedings under HMA, HAMA, CrPC, the DV Act and the Special Marriage Act. The Court held that maintenance should ordinarily be granted from the date of the application, a principle invoked and reinforced in subsequent Supreme Court judgments which stress that applicants must not be penalised for court delays. Recent commentary on maintenance jurisprudence reiterates that Section 125 must be interpreted liberally, with quantum reflecting inflation and realistic needs, and that moralistic judgments about a woman's conduct must not overshadow the statutory test unless clear grounds of disqualification under Section 125(4) are established.

Constitutional dimensions

Maintenance of women implicates core constitutional guarantees under Articles 14, 15 (especially 15(3)) and 21, as recognised in *Danial Latifi* and related jurisprudence. The Supreme Court in *Danial Latifi* held that the MWPRD Act must be construed so as not to deprive Muslim women of their right to a fair and reasonable provision, reading the statute consistently with equality, non-discrimination and dignity. More recent rulings on Muslim women’s maintenance and triple talaq similarly frame women’s financial security as part of the right to live with dignity and as an aspect of substantive gender equality, rather than as a matter of religious freedom alone.

Comparative evaluation of Hindu and Muslim regimes

The following table summarises key features of maintenance for women under Hindu law, Muslim law (including the 1986 Act) and Section 125 CrPC:

Aspect	Hindu law (HMA/HAMA /DV Act)	Muslim law MWPRD Act 1986 &	Section 125 CrPC (secular)
Source of right	Statutory right under HMA (Sections 24, 25), HAMA (Sections 18–23), DV Act monetary relief.	Personal law obligations of <i>nafaqah</i> and <i>iddat</i> plus statutory rights under MWPRD Act (Sections 3–4).	Statutory, summary remedy applicable to all religions under CrPC.
During marriage	Wife entitled to separate residence and maintenance under	Wife’s right to maintenance contingent on valid	Wife (including Muslim) entitled if husband has sufficient

Aspect	Hindu law (HMA/HAMA /DV Act)	Muslim law MWPRD Act 1986 &	Section 125 CrPC (secular)
	Section 18 HAMA if husband is guilty of cruelty, desertion, etc.; pendente lite under Section 24 HMA; DV Act relief.	marriage and cohabitation under classical law; DV Act and Section 125 also available as secular remedies.	means and neglects or refuses to maintain her, and she is unable to maintain herself.
After divorce	Section 25 HMA allows permanent alimony upon passing of matrimonial decree; availability clarified and limited by <i>Chand Dhawan</i> .	MWPRD Act gives right to “fair and reasonable provision and maintenance” payable within <i>iddat</i> ; liability of relatives/Waqf Board after <i>iddat</i> ; interpreted expansively in <i>Danial Latifi</i> .	Divorced wife who has not remarried can claim maintenance; Muslim divorced women explicitly recognised as entitled despite MWPRD Act.
Quantum and duration	Guided by Section 23 HAMA and Section 25 HMA: status of parties, reasonable wants, income and property,	“Fair and reasonable provision” construed to cover future needs though to be paid within	“Such monthly allowance as Magistrate thinks fit”; courts emphasise adequacy, inflation, and

Aspect	Hindu law (HMA/HAMA /DV Act)	Muslim law MWPRD Act 1986	Section 125 CrPC (secular)
	conduct, etc.	iddat; beyond iddat, support from relatives/Waqf Board under Section 4.	usual commencement from date of application.
Forum and procedure	Civil courts (family courts) for HMA/HAMA; Magistrates for DV Act monetary relief; family courts where established.	Magistrates of first class under MWPRD Act; family courts for ancillary relief; Section 125 and DV Act provide additional fora.	Magistrate of first class; summary procedure; proceedings essentially civil in nature with penal enforcement.

This comparison shows that while personal laws structure entitlements differently, Section 125 CrPC functions as a common minimum safety-net applicable irrespective of religion. At the same time, statutory schemes like HAMA and the MWPRD Act continue to shape the depth and mode of protection available to Hindu and Muslim women respectively.

Critique and suggestions for reform

First, the persistence of fault-based disqualifications (such as unchastity under HAMA and adultery or refusal to cohabit under Section 125(4)) increasingly appears inconsistent with a gender-sensitive, dignity-oriented approach, particularly where such findings are made on thin or stereotypical evidence. Judicial trends, including liberal

interpretations of “unable to maintain herself” and rejection of arbitrary triple talaq, already move towards a more protective stance, suggesting that legislative amendments could further de-emphasise moral fault in favour of economic vulnerability.

Secondly, overlapping jurisdiction across HMA, HAMA, MWPRD Act, DV Act and Section 125 continues to generate procedural complexity and strategic litigation, despite the *Rajnes v. Neha* guidelines. A more integrated family-law code on maintenance—without disturbing religious personal laws on marriage and divorce—could rationalise procedures, create uniform disclosure requirements, and ensure automatic set-off and consolidation of orders across forums.

Thirdly, while *Danial Latifi* and the 2024 decision on Muslim divorced women have significantly strengthened Muslim women’s maintenance rights, the MWPRD Act’s text remains opaque and open to restrictive interpretations at subordinate levels. Codifying, through amendment or a new statute, the principles that the husband’s obligation extends beyond iddat by way of fair provision and that Section 125 remains fully available could lock in constitutional gains and reduce litigation.

Finally, maintenance jurisprudence would benefit from clearer statutory guidelines on calculation of quantum—building on *Rajnes v. Neha*—such as presumptive income-sharing formulas, mandatory consideration of unpaid care work, and mechanisms to periodically index maintenance to inflation. Such measures would render women’s right to maintenance more predictable, less dependent on individual judicial discretion, and more closely aligned with the constitutional promise of substantive equality and a dignified standard of living.

Conclusion: Towards Unified Protection and Constitutional Harmony

The comparative analysis of maintenance frameworks for women under Hindu and Muslim personal laws, juxtaposed against the secular

bulwark of Section 125 CrPC, reveals a legal landscape that, while fragmented and procedurally complex, ultimately converges on the constitutional imperative of ensuring economic security and human dignity for vulnerable spouses and dependants. Hindu law, through the structured provisions of the Hindu Marriage Act, 1955 (Sections 24–25) and Hindu Adoptions and Maintenance Act, 1956 (Sections 18–23), offers a codified, fault-tempered right to maintenance during marriage, pendente lite, and post-decree alimony, progressively enriched by the DV Act 2005's monetary relief and residence protections. By contrast, Muslim women's entitlements—rooted in classical *nafaqah*, *iddat*, and *mahr*—were initially confined by the Muslim Women (Protection of Rights on Divorce) Act, 1986, but judicial reinterpretation in *Shah Bano* (1985), *Danial Latifi* (2001), and *Shamim Ara* has expansively aligned them with Article 21's dignity mandate, affirming Section 125's override over personal law limits and extending "fair and reasonable provision" beyond *iddat*. Landmark rulings like *Bhagwan Dutt* (1975), *Chand Dhawan* (1993), and the comprehensive *Rajnish v. Neha* (2020) guidelines have harmonised this multiplicity, mandating asset disclosures, set-offs across forums, inflation-adjusted quanta (typically 1/5th–1/3rd of husband's net income), and awards from the date of application to deter delays and forum-shopping.

This hybrid regime, though productive of overlapping jurisdiction, embodies substantive equality under Articles 14, 15(3), and 21 by treating maintenance not as charity but as an enforceable facet of familial duty and state welfare policy, transcending religious boundaries to prevent vagrancy and destitution. Yet, persistent challenges—conditionality on chastity/adultery, discretionary quanta devoid of statutory formulas, uneven rural enforcement, and the MWPRD Act's lingering ambiguity—underscore the need for reform: a consolidated Maintenance Code could integrate remedies, introduce presumptive income-sharing

(factoring unpaid homemaking), automatic indexation to CPI, and fault-neutral criteria, while preserving personal laws on marriage/divorce sacraments. Such evolution would realise the Uniform Civil Code vision under Article 44 without homogenising faith practices, ensuring Indian women—Hindu, Muslim, or otherwise—secure not mere subsistence, but dignified autonomy post-marital rupture. Ultimately, from *Shah Bano*'s secular thunderbolt to *Rajnish*'s procedural roadmap, jurisprudence affirms that financial empowerment is the bedrock of gender justice in pluralistic India.

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