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## Alimony and Equality: Analysing Gender Bias in Maintenance Awards

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*This article looks at the ongoing gender prejudice in India's alimony and maintenance laws. Although the legal system appears neutral on the surface, judges interpret it, and society expects that men provide financial support while women rely on them. These complexities in modern relationships are not captured by a one-size-fits-all approach, as roles can be reversed or partners engage equally. The study argues for a shift from gender-based assumptions to a needs-based maintenance paradigm by examining legislation requirements, case law, and comparative international techniques. It highlights the socioeconomic consequences of the current system. Alimony modifications are also proposed to ensure that they serve their intended purpose of giving equal assistance based on financial need rather than gender bias.*

**Keywords:** *gender neutrality, alimony and maintenance, judicial interpretation, legislative reforms.*

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### INTRODUCTION

The provision of spousal support, or alimony, post-separation is based on the premise of financial security for the disadvantaged spouse. Historically, courts in India have made maintenance awards primarily to women, as they have operated on the assumption that men are often preeminent earners, which affects women's chances of generating their own financial independence. As gender roles continue to adapt and more women can cultivate

financial independence, it raises questions about the justice of the prevailing structures, which may not be consistent with constitutional equality. Although the law offers the option for either spouse to claim maintenance, very few men actually receive maintenance awards; when they do, however, the legal framework sustains a heavy gender bias. This article examines the legal framework at law, the social assumptions implied, and decisions made and whether these recent adjudications uphold the concept of gender equality in the area of determinations for maintenance awards.

## LEGAL FRAMEWORK GOVERNING MAINTENANCE

The Indian legal system, through a multitude of statutes, has provided for maintenance for a dependent spouse. The Hindu Marriage Act 1955<sup>1</sup> has provisions for the maintenance of married persons in two of its sections and also in some other laws. Section 24 of the Hindu Marriage Act provides that a spouse can claim interim maintenance during the proceedings, while Section 25 states that upon dissolution of marriage, either spouse can seek permanent alimony.

Under the Criminal Procedure Code, 1973, again section 125<sup>2</sup>, this section provides for maintenance for a dependent spouse of any religion. The major aim of this provision is the prevention of the dependent spouse suffering destitution, in particular the wife, children and parents of the dependent spouse. The Muslim Women (Protection of Rights on Divorce) Act 1986<sup>3</sup> has similar provisions for divorced wives in the event of the termination of marriage.

While there are similar provisions in the Special Marriage Act 1954,<sup>4</sup> and all other personal laws as well, the main feature of all these statutes is that there is judicial discretion on the amount of maintenance and for how long. However, in different and inconsistent decisions, the courts have relied on subjective factors of income, conduct, lifestyle, etc., and achieved different results when considering the same factors when making different awards.

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<sup>1</sup> Hindu Marriage Act 1955, s 24

<sup>2</sup> Criminal Procedure Code 1973, s 125

<sup>3</sup> Muslim Women (Protection of Rights on Divorce) Act 1986

<sup>4</sup> Special Marriage Act 1954

## **TRADITIONAL GENDER NORMS IN MAINTENANCE**

The notion of maintenance law in India has traditionally been rooted within the discourse of gender roles and gender expectations. Traditionally, the economic dependence of women making them legally, socially, and psychologically equal to men as a participant who should legally expect a thorough education if marriage had economic value, as women were primarily educationally dependent on husbands, who had complete access to property; thereby, it was customary to assume that, post-separation/divorce, it was likely she would still require maintenance to perform the same caring role she contracted by marriage (assuming economic superiority of the husband). Economic dependencies made the presumption of maintenance rooted in retaining the economic superiority of one partner, since an equal role restricted them, and it became embedded in maintenance decisions from that time forward. All the while, both partners' roles were changing as men and women grappled with their new economic roles without legal precedent. To further contextualise, marriages were and still are entirely imbued with expectations of care as guardians in a society where women's primary duty was care, which curtailed their career; thus, it was assumed that female home workers deserved compensation for their unpaid and underpaid work in the house, regardless of their husband's presumed superior income. While such assumptions aimed to create ease of relativeness for women to recover from expectations and thank their intervenors in there and their children's lives about equality in home life, these historic assumptions had a gender differential effect of deriving the definition of one party, almost exclusively women, deserving periodic compensation, limiting the meaning of alimony to those hurt by gender disparity even where men are also dependent.

## **GENDER BIAS IN ACTION & CHANGING ECONOMIC REALITIES**

Although the law in principle is gender-neutral, in practice, maintenance is generally granted to women, which entrenches the stereotype of male financial power. Courts in India often show their reluctance to grant maintenance to men even where they are economically dependent or where they have the position of househusbands. There is a broad appeal to outdated norms that disregard realities where women dominate and are breadwinners. As such, in many cases, husband maintenance claims are denied and not enforced when the wife is financially well-off and/or the husband is financially weak. This illustrates legal inequalities in practice.

Nonetheless, changes to the socio-economic fabric of India are substantial. As the number of working women and dual-income families grows, the clear distinctions in gender roles in marriages are being called into question. While men who stay home and take care of the kids are relatively rare, a shift is evident. These changes present a unique opportunity to re-evaluate maintenance laws using an economic equality and shared responsibility framework. Maintenance needs to reflect actual monetary needs and contributions regardless of gender. When considering these changes, the law must keep pace with the societal changes to avoid solidifying stereotypes and pave the way to real equality in matrimonial law. Creating a gender-neutral system for maintenance can lead to a fairer and more balanced legal system for people based on their sex.

## COMPARATIVE ANALYSIS

Alimony (also referred to in some jurisdictions as spousal support) demonstrated a range of legal standards around the world. In the United States, the laws governing alimony vary widely from state to state; courts will consider a multitude of factors, such as income, term of the marriage, and standards of living.<sup>5</sup> Canada relies on a formulaic method, calculated by the difference in income and the term of the marriage.<sup>6</sup> The United Kingdom uses a needs-based approach, which relies heavily on the needs that stem from the standard of living during the marriage, as well as each party's contribution to the marriage.<sup>7</sup> Australia typically employs a dual (i.e., both income and duration-based) approach. In India, the legislation refers to income, standard of living, and contributions to the marriage, but is often inconsistent and not gender-neutral in implementation. Furthermore, it is worth noting that many countries now have a recognition of eligibility that is gender-neutral, making it so that either party can claim maintenance support.

There is plenty to learn from these systems, especially the Canada and UK systems, analogous to the introduction of formulaic guidelines in India, which clear the way to use formulas as a determinant of maintenance support awards and emphasise economic need instead of gender. Equitable changes to India's maintenance and spousal support laws could

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<sup>5</sup> California Code, Family Code – FAM 2005, s 4320

<sup>6</sup> 'Spousal Support Advisory Guidelines' (*Department of Justice Canada*, 17 May 2024)

<<https://www.justice.gc.ca/eng/fl-df/spousal-epoux/ssag-ldfpae.html>> accessed 27 November 2025

<sup>7</sup> *White v White* [2000] UKHL 54

result in greater fairness by avoiding reliance on judicial discretion and in creating equality in maintenance awards regardless of the marital circumstances.

## CONSTITUTIONAL AND HUMAN RIGHTS PERSPECTIVE

Although the Constitution of India guarantees equality before the law (Article 14)<sup>8</sup> and prohibits discrimination on grounds of sex (Article 15)<sup>9</sup>, examining maintenance laws' applications demonstrates a range of differences between constitutional values and real-life law. Maintenance laws have clearly defined gender-neutral statutes. But, in practice, judicial opinions and customary principles often create laws utilising gender stereotypes that portray women as dependents and men as providers. With gender-neutral statutory language, the practical application of maintenance law fails to achieve the level of equality intended under the Constitution. The application of maintenance law fails to achieve equality when it favours men and places a greater economic burden on women, as equal status demands. Similarly, the law fails to reinforce political ideals of equality when economic disadvantage places a man in a comparable position where a woman would use maintenance law against him. For the application of maintenance law to reflect human rights values, an urgent need exists for gender-neutral law focused on evaluating financial needs and contributions, without bias, toward either gender. If we could transition to such gender-neutral principles, we would not only have more commitment to constitutional values, but we would also be able to serve justice toward both genders regardless of gender, traditional perception of marital roles, or the merit of support that provides differential treatment.

## REFORM PROPOSALS AND WAY FORWARD

In order for maintenance awards to be equitable, there is a real need to have laws reformed with a gender-neutral understanding. Statutory provisions should treat both spouses equally, as opposed to being based on gender roles with respect to need, earning capacity, circumstances during marriage, duration of relationship, etc. If clear criteria are established, it will tend to reduce judicial discretion and make maintenance award norms predictable and consistent.<sup>10</sup> Prenuptial agreements can encourage couples to define their financial

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<sup>8</sup> Constitution of India 1950, art 14

<sup>9</sup> Constitution of India 1950, art 15

<sup>10</sup> Law Commission, *Consultation Paper on Reform of Family Law* (2018)

responsibilities under a marriage regime, so future disagreements are less likely to occur. The judiciary must sensitively be active to acknowledge and eliminate implicit gender biases during its adjudication role. Judicial education, previously established case law, and public policy help facilitate this change. A fair and reformed framework will ensure the expectation of constitutional trust and that dignity and justice are available to all people equally.

## **MEDIATION AND ALTERNATE DISPUTE RESOLUTION (ADR)**

Mediation and alternative dispute resolution (ADR) offer a more civil and efficient resolution process to maintenance disputes, as opposed to litigating and going through the court processes. Traditional litigation is often adversarial, emotionally taxing, and lengthy. Mediation, on the other hand, is more encouraging of dialogue and moving toward a mutual understanding and settlement that is fair and manageable based on the unique circumstances of their situation. Family law is sensitive, and mediation can provide space to have discussions to resolve financial issues after separation in a more confidential, less adversarial space. ADR mechanisms work particularly well in maintenance cases where rehashing the past and trying to fit parties into a fixed formula for the best means adjustments rarely work. Mediation focuses on the distinct specifications of either spouse's or former spouse's situations, their interests, earning ability, contributions to the marriage, and how to share financial resources in a joint way that is equitable, incorporating the differences between parties rather than uniformity. Promoting ADR in maintenance matters will alleviate court pressure and meet the jurisdiction's broader ideals of providing accessible, restorative, fair, and just outcomes for families - and through family law.

## **ROLE OF LEGAL AID**

The availability of proper legal aid is important for achieving procedural justice in maintenance proceedings. However, most economically weaker spouses (including men) do not claim or contest maintenance applications, largely for reasons of ignorance or due to lack of funds to retain legal representation. The legal system's awareness of these factors is more likely to be found against the backdrop of providing legal aid in family law under the Legal Services Authorities Act.<sup>11</sup> While the legal services authorities go to great lengths to

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<sup>11</sup> Legal Services Authorities Act 1987

understand their unintentional gendered assumptions in the design and delivery of family law legal aid and legal services, legal aid must go beyond providing formal availability and towards engagement of those who operate in the justice system through the provision of gender-neutral awareness of rights under maintenance laws. Ensuring both men and women know and understand their rights can lead to hybridising the system, which can lead to diminishing the reliance on stereotypes. More importantly, increasing the infrastructure of legal aid, having paralegals trained in family law, and promoting information that is gender neutral are critical first steps towards equitable access to justice in family law matters involving matrimonial relationships.

## CONCLUSION

To conclude, this article critically evaluates the persistent gender prejudice integrated into India's alimony and maintenance laws. While in theory, there are statutory laws that regulate and provide a controlled appearance, if we go and see the ground reality, then we can see that these laws are often biased, uneven or maybe misaligned by the judicial interpretation and societal expectations that assume men as primary providers and women as the financial dependents. A society that espouses ideals of justice and equality needs to act in ways that maintain laws are both consistent with those ideals in theory and practice. As the roles of women and men have changed, so should the laws, reflecting the modern socio-economic condition, which acknowledges that either spouse may be financially dependent based on relationship dynamics. There is no purpose in preventing us from surmounting new gender-based expectations and fundamentally suggesting that some men, not just women, may require financial assistance, as gender roles persist in projects of inhumane inequality. Alimony must be based solely on needs, contributions, and circumstances, not gender. It is time to create balanced and gender-neutral reforms that consider the facts of each case and, most importantly, allow both partners to overcome the petty consequences faced in divorce with human dignity and fairness. We hope to reach a new place in our thinking where the legislation reflects the nature of couples and modern socio-economic roles. Only in this way can we advance to a more predictable outcome that reflects the ideals of our Constitution in respect of the principle of equality before the law, which is, in fact, equality for all.