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Gender Equality in Maintenance Laws: A Comparative Analysis of Legal Frameworks

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Indian maintenance laws are governed by two different legal systems: religion-specific personal law and universal secular law. This raises an important question of gender equality and uniformity of legal rights. The secular law is considered to be more impartial and progressive than the personal laws, as they apply regardless of religion, yet Hindu personal law takes a more gender balanced approach, whereas the secular law limits the right to seek maintenance only to wives. Through analysis of statutory provisions such as the Hindu Marriage Act 1955, and the Special Marriage Act 1954, together with leading judicial decisions, this paper explores the apparent contradiction and contrasting approaches between secular and personal law governing maintenance in India. The paper tries to understand the extent to which these laws uphold gender equality; it questions whether secularism necessarily ensures greater gender equality within maintenance laws.

Keywords: *gender equality, marriage, maintenance, secular law, personal law.*

INTRODUCTION

Maintenance means support or sustenance. It is the monetary assistance one spouse has the right to receive from the other when a marriage breaks down; it is the monetary assistance given to the financially dependent spouse by the financially independent one to meet their

basic living expenses. Maintenance laws were adopted as a social welfare measure to provide financial support to dependent spouses and children, making sure they are not subjected to poverty and hardship. Maintenance can be either mutually agreed upon by the parties upon dissolution of marriage or be ordered by a court. Maintenance aims to ensure that the claimant continues to enjoy a lifestyle similar to how they lived while the marriage lasted. Maintenance may also be referred to as alimony or spousal support, and the amount is decided by the court. The court, before deciding, takes into consideration a number of factors such as income of both spouses, age, education, employment and the cost involved in raising dependent children. Laws regarding maintenance are governed by two distinct legal systems in India working simultaneously: on one side are the religion-specific personal laws, such as the Hindu Marriage Act 1955 ('HMA')[1], applicable only to Hindus, while the other consists of the secular framework under the Special Marriage Act 1954 ('SMA')[2] which applies regardless of religion; it is of common belief that the secular law is more progressive and impartial than the religion-specific law.

Sections 24 and 25 of the HMA explicitly mention that either the wife or the husband can claim maintenance from the other, making Hindu law formally gender-neutral.[3] On the contrary the secular provisions of Section 125 of the Code of Criminal Procedure 1973 ('CrPC')[4], now as Section 144 of the Bharatiya Nagarik Suraksha Sanhita 2023 ('BNSS')[5], also the Sections 36 and 37 of SMA[6] gives the right to claim maintenance to wives alone which creates an unexpected contradiction that a law based on religious beliefs treats spouses as equals irrespective of economic standings, whereas the universal law is of the traditional view that men are the primary breadwinners and women are expected to be financially dependent on them.

HINDU PERSONAL LAW: A GENDER-NEUTRAL ENTITLEMENT

Sections 24 and 25 of HMA[7] provide for interim maintenance and permanent maintenance, respectively, and both provisions use the formula 'either the wife or the husband', ensuring

[1] The Hindu Marriage Act 1955
[2] The Special Marriage Act 1954
[3] Hindu Marriage Act 1955, ss 24 and 25
[4] Code of criminal procedure 1973, s 125
[5] Bharatiya Nagari Suraksha Sanhita 2023, s 144
[6] The Special Marriage Act 1954, ss 36 and 37
[7] Hindu Marriage Act 1955, ss 24 and 25

that the spouse who is not financially independent can seek support from the other, not just in theory, but courts have applied this in practice as well. In the case of *Rani Sethi v Sunil Sethi,* the husband had no independent income, and the wife was financially successful; the High Court of Delhi ordered a monthly maintenance to be paid to the husband by his wife and also allowed the claimant to continue using a car.[8] By granting maintenance in favour of a husband who was genuinely unable to earn a livelihood and support himself, the decision reflected that maintenance under Hindu law is more about financial needs rather than gender.

However, courts have made it clear that the maintenance provisions are not misused to justify voluntary unemployment. The Bombay High Court in *Kanchan v Kamalendra* held that a husband who has earning potential cannot simply remain unemployed and demand maintenance from his working wife; he should establish that he is unable to maintain himself and prove that his inability to earn is a result of legitimate incapacity, including physical or mental disability and not a voluntary choice not to work[9]. The case establishes an important guardrail: gender-neutral maintenance is available to husbands, but only where their inability to earn is real, preventing capable men from exploiting working wives out of mere laziness.

The application of gender-neutral maintenance was expanded by the Apex Court of India through later decisions; in the leading judgment of *Sukhdev Singh v Sukhbir Kaur*, the Supreme Court held that a spouse can claim permanent maintenance under Section 25 of HMA even when the marriage has been declared void. The court held that a decree of nullity passed under Section 11 constitutes a decree within the meaning of Section 25, enabling a claim for permanent maintenance.[10] It was also observed that denying maintenance purely because the marriage was void would violate the dignity and financial security of the dependent spouse. This decision confirms that maintenance rights under Hindu Law are intended to protect the economically weaker spouse regardless of gender or whether the marriage was ultimately held void.

[8] *Rani Sethi v Sunil Sethi* 179 (2011) DLT 414
[9] *Smt Kanchan W/O Kamelendra Sawarkar v Kamalendra Alias Kamalakar* (1992) 94 BOMLR 418
[10] *Sukhdev Singh v Sukhbir Kaur* (2025) INSC 197

SECULAR LAW: PROTECTION FOR WIVES ALONE

Section 125 of CrPC, re-enacted in materially similar terms as Section 144 of BNSS, applies to every Indian regardless of religion, but confines the right to claim maintenance to wives, children, and parents; husbands are conspicuously absent from the text.[11] The Supreme Court explained the underlying rationale in *Ramesh Chander Kaushal v Veena Kaushal*, describing the provision as a measure of social justice designed to ensure that women, who have historically been financially weaker, are not left homeless or starving once a husband leaves them.[12] The judgment is candid about the assumption built into the section: the husband is treated as the presumptive party at fault, and the wife as the presumptive victim, on the footing that men are ordinarily the family's sole earners.

Later judicial decisions have continued to interpret this provision with a welfare-oriented approach; the Supreme Court in *Badshah vs Urmila Badshah Godse* held that judges should consider the real-life circumstances of a woman instead of relying on strict technical rules, ensuring that a genuine claim is not rejected because of legal loopholes.[13] The judgment prioritises the claimant's immediate social welfare and survival over strict formal equality between the parties. The tension between religious personal law and the secular safety net reached its most contentious point in *Mohd Ahmed Khan v Shah Bano Begum,* where a divorced muslim woman sought maintenance under Section 125 after her husband argued that his liability under muslim personal law was limited to the three-month Iddat period.[14] The Supreme Court held that Section 125[15] is a universal, secular provision that overrides restrictive personal-law limits whenever a woman faces destitution, confirming that the secular regime was designed to operate as a humanitarian floor across all religious communities, but only for wives.

A STRUCTURAL ANOMALY

The asymmetry is at its sharpest in SMA, India's principal secular code for interfaith and civil marriages. Sections 36 and 37 provide for interim alimony and permanent maintenance, but both provisions restrict the claim to the wife, who alone may apply for an order requiring the

[11] Code of Criminal Procedure 1973, s 125; Bharatiya Nagarik Suraksha Sanhita 2023, s 144
[12] *Ramesh Chander Kaushal v Veena Kaushal & Ors* (1978) 4 SCC 70
[13] *Badshah v Sou Urmila Badshah Godse & Anr* (2014) 1 SCC 188
[14] *Mohd Ahmed Khan v Shah Bano Begum & Ors* (1985) 2 SCC 556
[15] Code of Criminal Procedure 1973, s 125

husband to pay.[16] This stands in direct contrast to Sections 24 and 25 of the HMA[17], which use the deliberately gender-neutral formula 'either the wife or the husband'. The practical consequence is that a husband married under the SMA has no legal standing to seek interim maintenance, however severe his disability, unemployment, or destitution.

This creates an irregularity as the husband's right to maintenance entirely depends on the statute under which a couple registers their marriage; if a marriage is registered under Hindu law, the husband has the right to claim maintenance, but when a marriage is registered under the secular law, the same right of the husband is immediately extinguished. This structural disparity suggests that India's secular matrimonial law can, in this respect, discriminate more overtly based on sex than religious personal law does.

The constitutionality of this distinction was tested in *Purnananda Banerjee v Swapna Banerjee*, where a husband argued that denying him standing to claim interim maintenance under the SMA violated the guarantee of equality in Article 14 of the Constitution.[18] The Calcutta High Court dismissed the challenge, holding that the restriction was protected by Article 15(3), which permits the state to make special provision for women and children.[19] The judgment shows that courts regard the gender restriction in secular matrimonial law not as an oversight but as a deliberate policy choice, justified by treating women as a class requiring structural protection even at the cost of formal equality between spouses.

THE CLASH OF REGIMES: OVERLAPPING CLAIMS

Because personal and secular remedies coexist, a wife may in principle pursue two separate maintenance claims, one under Hindu law and one under the secular framework, raising the risk of double recovery, or of the remedy being used to harass the paying spouse. This problem was addressed in *Rajnesh v Neha,* where the Supreme Court held that a claimant may use both regimes, but any additional award must be adjusted against the award already granted.[20] That means if a court awards ₹10,000 to a wife under one proceeding and later another court awards ₹15,000, she is only permitted the additional ₹5,000 and not an aggregate of both the awards. The ambiguity of the overlapping jurisdiction was clarified in

[16] Special Marriage Act 1954, ss 36 and 37
[17] Hindu Marriage Act 1955, ss 24 and 25
[18] *Purnananda Banerjee v Sm Swapna Banerjee & Anr* (1981) 1 COMPLJ 220 (CAL)
[19] The Constitution of India 1950, art 15(3)
[20] *Rajnesh v Neha* (2021) 2 SCC 324

this judgment, where the court made sure that the spouse paying alimony is not subjected to multiple alimony awards for the same separation.

CONCLUSION

The Indian maintenance laws uncover a legitimate anomaly. The HMA under Sections 24 and 25[21] enables both wives and husbands to claim financial support if they are genuinely unable to sustain themselves, provided that the claim is not made by a physically and mentally capable person voluntarily trying to escape work. On the contrary, the secular laws, including Section 144 of the BNSS (earlier Section 125 of CrPC)[22] and Sections 36 and 37 of the SMA[23], are still based on the assumption that husbands are the providers and wives are the dependents. Courts have defended this approach as a protective measure under Article 15(3)[24] of the Indian Constitution for women rather than treating it as a legacy provision. For the legal system to genuinely progress and become truly gender neutral, such provisions have to be amended by substituting the terms "wife" and "husband" with the gender-neutral term "spouse. Such a reform could ensure that the right to seek maintenance is determined by financial dependency rather than gender. But at the same time, a vital question remains: whether Indian society is currently at a stage where such reforms would ensure fairness for everyone or whether women are still facing substantial economic and social disadvantage such that such a step would put them at a greater disadvantage; is Indian society ready to take such a step, or is such a pre-existing protection-based approach still necessary?

[21] Hindu Marriage Act 1955, ss 24 and 25
[22] Code of Criminal Procedure 1973, s 125; Bharatiya Nagarik Suraksha Sanhita 2023, s 144
[23] Special Marriage Act 1954, ss 36 and 37
[24] The Constitution of India 1950, art 15(3)