Page: 486-522 *URL: www.lijdlr.com*

LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

ISSN: 2583-7753

LawFoyer International Journal of Doctrinal Legal Research

[ISSN: 2583-7753]

Volume 4 | Issue 4

2026

DOI: https://doi.org/10.70183/lijdlr.2026.v04.393

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BALANCING RIGHTS AND RESPONSIBILITIES: RETHINKING ALIMONY AND MAINTENANCE IN INDIAN FAMILY LAW

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I. ABSTRACT

Maintenance and alimony are among the most vital financial consequences of matrimonial disputes in India, protecting a spouse from economic hardship, yet determining fair maintenance is difficult. Statutes, personal laws and secular remedies overlap, creating considerable judicial discretion. This article examines whether this framework balances the claimant's economic security against the payer's financial capacity and responsibilities. Adopting a doctrinal and analytical method, the study traces the historical foundations of economic security, including stridhana and mahr, and analyses the Hindu Marriage Act 1955, the Hindu Adoptions and Maintenance Act 1956, the Bharatiya Nagarik Suraksha Sanhita 2023, the Protection of Women from Domestic Violence Act 2005 and the Muslim Women (Protection of Rights on Divorce) Act 1986. It examines judicial development from Mohd. Ahmed Khan v. Shah Bano Begum and Danial Latifi v. Union of India to Rajnesh v. Neha and Mohd. Abdul Samad v. State of Telangana, which together govern financial disclosure, the coexistence of personal-law and secular remedies and the adjustment of overlapping awards. It argues that the real difficulty is not the absence of remedies or criteria but of a coherent method of quantification, since courts apply judge-made factors without any stated weighting. It therefore proposes a principled approach based on need, earning capacity, standard of living, domestic contribution, responsibilities, duration of marriage and changed circumstances, supported by mandatory financial disclosure, set-off across parallel proceedings, reasoned orders and compliance with existing time limits for interim maintenance. Maintenance is neither a reward for marriage nor a punishment for the stronger spouse, but a mechanism for economic justice after matrimonial breakdown.

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II. KEYWORDS

Maintenance, Alimony, Quantification, Financial Disclosure, Personal Law.

III. INTRODUCTION

Marriage is not only a personal and familial relationship. It also creates certain legal and economic obligations between the spouses. One of the most important among these obligations is the duty of financial support. This obligation becomes particularly important when the matrimonial relationship breaks down and the economic position of the spouses is not equal.

The problem is simple to understand but difficult to resolve in law. A spouse may have little or no independent income after separation because of unemployment, domestic responsibilities, caregiving or the sacrifice of professional opportunities during the marriage. At the same time, the spouse from whom maintenance is claimed may have his or her own financial obligations, including responsibility towards children, parents and other dependants. Not every such obligation, however, carries equal weight, a distinction considered in Section XVIII. A maintenance order must therefore protect one person without creating an unreasonable financial burden upon another.

The word "alimony" is derived from the Latin term alimonia, referring to nourishment or sustenance. In modern family law, its meaning is considerably wider and generally refers to financial support provided to meet the reasonable needs of a spouse. Depending upon the circumstances, such support may include accommodation, food, clothing, education, medical expenses and other reasonable requirements.[2]

Indian maintenance law does not provide one uniform statutory framework. Different remedies arise under different statutes and personal-law systems. Sections 24 and 25 of the Hindu Marriage Act 1955 ("HMA"), section 18 of the Hindu Adoptions and Maintenance Act 1956 ("HAMA"), section 144 of the Bharatiya Nagarik Suraksha

[2] Alimony, BLACK'S LAW DICTIONARY (12th ed. 2024).

Sanhita 2023 ("BNSS") and the Muslim Women (Protection of Rights on Divorce) Act 1986 ("MWPRD Act") operate in different circumstances and for different purposes.[3]

The existence of multiple remedies is not necessarily a weakness. Different remedies may be necessary because maintenance during matrimonial litigation, permanent alimony, maintenance during marriage and the prevention of destitution do not serve exactly the same purpose. The difficulty arises when these remedies operate without sufficient coordination or when courts are required to determine the amount of maintenance without reliable information about the actual financial position of the parties.

The Supreme Court's decision in *Rajnesh v. Neha* recognised this difficulty and attempted to bring greater consistency into maintenance proceedings through financial disclosure requirements and guidelines concerning overlapping maintenance claims.[4] The decision represents an important development, but it also reveals a larger problem: Indian law has developed several remedies for maintenance, but it still leaves considerable room for uncertainty regarding the actual amount that should be awarded.

This article argues that the central problem in contemporary maintenance law is therefore not simply whether a spouse has a right to maintenance. The more difficult question is how that right should be quantified fairly.

A fair maintenance system must consider the reasonable needs of the claimant as well as the financial capacity and legitimate responsibilities of the person directed to pay. It must also recognise that economic contribution within marriage cannot always be measured through salary. A spouse who leaves employment or spends years performing unpaid domestic and caregiving work may not have an income statement showing that contribution, but the economic consequences of that decision may become visible after separation.

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[3] Hindu Marriage Act, 1955, §§ 24–25, No. 25, Acts of Parliament, 1955 (India); Hindu Adoptions and Maintenance Act, 1956, § 18, No. 78, Acts of Parliament, 1956 (India); Bharatiya Nagarik Suraksha Sanhita, 2023, § 144, No. 46, Acts of Parliament, 2023 (India); Muslim Women (Protection of Rights on Divorce) Act, 1986, § 3, No. 25, Acts of Parliament, 1986 (India).

[4] *Rajnesh v. Neha*, (2021) 2 S.C.C. 324 (India).

At the same time, maintenance should not automatically be treated as a mechanism for equalising the incomes of spouses. Marriage does not create an unlimited right to the other spouse's income. The objective should instead be to prevent unreasonable economic hardship and to provide financial security consistent with the circumstances of the parties.

The article therefore examines the development of maintenance law in India and argues for a more coherent approach based upon need, capacity, contribution and responsibility. The purpose is not to propose one rigid mathematical formula. Such a formula would be unsuitable for the wide variety of matrimonial circumstances. Instead, the objective should be to establish a common set of principles which can guide judicial discretion.

A. Research Objectives

This study pursues three objectives:

1. To map the overlapping maintenance remedies available under the matrimonial statutes, section 144 BNSS, the Protection of Women from Domestic Violence Act 2005 ("DV Act") and the MWPRD Act;
2. To examine how courts presently determine the quantum of maintenance, including the criteria laid down in *Rajnesh v. Neha* and in subsequent decisions of the Supreme Court; and
3. To propose common principles capable of structuring judicial discretion across these remedies without displacing them.

B. Research Questions

The study addresses the following questions:

1. Does the fragmented statutory framework of maintenance produce coherent and predictable outcomes?
2. Which factors should structure the quantification of maintenance, and how should they be weighed against one another?

3. Do the disclosure and set-off directions in *Rajnesh v. Neha*, read with the adjustment provisions of the BNSS, adequately prevent double recovery across parallel proceedings?

C. research methodology

The study is doctrinal and analytical. Its primary sources are the HMA, HAMA, the BNSS and the corresponding provisions of the Code of Criminal Procedure 1973, the DV Act, the Special Marriage Act 1954, the Parsi Marriage and Divorce Act 1936, the Indian Divorce Act 1869 and the MWPRD Act, together with decisions of the Supreme Court, principally *Shah Bano*, *Danial Latifi*, *Rajnesh v. Neha* and *Mohd. Abdul Samad*.

Its secondary sources include treatises on Hindu and Muslim law, scholarly literature on the economic rights of separated and divorced women and the Law Commission of India's Consultation Paper on Reform of Family Law. The analysis is partly normative: having identified how courts presently determine maintenance, the article proposes principles to guide the exercise of judicial discretion.

IV. FROM PROPERTY RIGHTS TO MAINTENANCE: HISTORICAL FOUNDATIONS OF ECONOMIC SECURITY

A. Stridhana and the Economic Position of Hindu Women

The historical position of women's property rights under Hindu law provides an important background to the development of economic protection within matrimonial relationships. However, stridhana should not be confused with maintenance or alimony.

Stridhana broadly referred to property which a woman could acquire from recognised sources, including gifts and certain forms of inheritance. Its scope varied across schools of Hindu law and changed considerably with the development of statutory law.[5]

The Hindu Succession Act 1956 marked an important change in the proprietary position of Hindu women. Section 14 provides that property possessed by a female

[5] PARAS DIWAN & PEEYUSHI DIWAN, MODERN HINDU LAW: CODIFIED AND UNCODIFIED (25th ed. 2021).

Hindu shall be held by her as its full owner, subject to the statutory exception contained in section 14(2).[6]

The significance of stridhana for the present discussion lies in the relationship between property ownership and economic independence. Property belonging independently to a woman could provide a degree of financial security within a social structure where women were often economically dependent upon the matrimonial household.

It is important, however, to maintain the distinction between property and maintenance. Stridhana concerns ownership. Maintenance concerns an obligation to provide financial support. A woman does not become entitled to maintenance merely because she possesses stridhana, nor does maintenance transfer ownership of the payer's property to the claimant.

The historical development nevertheless demonstrates that matrimonial law has long had an economic dimension. The legal position of a spouse within marriage cannot be completely separated from the question of who controls and possesses economic resources.

B. Mahr Under Muslim Law

Muslim law provides another important example through the institution of mahr or dower. Mahr is a legal entitlement of the wife arising from the marriage. It may consist of money, property or another valuable entitlement and may be fixed at the time of marriage or determined according to the principles governing proper dower.[7]

Dower is generally classified into specified and proper dower. Specified dower is fixed by agreement, while proper dower is determined according to the circumstances recognised under Muslim law. Specified dower may further be divided into prompt and deferred dower depending upon the time of payment.

Mahr should not, however, be described simply as the consideration for marriage. Although Muslim marriage possesses contractual characteristics, the legal obligation

[6] Hindu Succession Act, 1956, § 14, No. 30, Acts of Parliament, 1956 (India).
[7] ASAF A.A. FYZEE, OUTLINES OF MUHAMMADAN LAW 114–20 (Tahir Mahmood ed., 5th ed. 2008).

relating to mahr arises from the matrimonial relationship and has a distinct legal character.[8]

It is also necessary to distinguish mahr from maintenance. Mahr is an entitlement arising from marriage, whereas maintenance is a continuing or statutory obligation of financial support. The two may both contribute to the economic security of a woman, but they are not interchangeable.

These historical institutions are important because they show that the economic consequences of marriage have always had a place within Indian family law. Modern maintenance law, however, has developed beyond these traditional institutions and now deals with wider questions of equality, dignity, financial dependence and economic justice.

V. THE FRAGMENTED STATUTORY FRAMEWORK OF MAINTENANCE

The contemporary Indian framework contains several sources of maintenance. These provisions cannot simply be treated as different versions of the same remedy because each has a different statutory purpose.

The principal provisions include:

1. sections 24 and 25 of the HMA;
2. section 18 of HAMA;
3. section 144 of the BNSS;
4. sections 12 and 20 of the DV Act;
5. sections 36 and 37 of the Special Marriage Act 1954 ("SMA"), sections 39 and 40 of the Parsi Marriage and Divorce Act 1936 ("PMDA") and sections 36 and 37 of the Indian Divorce Act 1869 ("IDA");
6. the MWPRD Act; and
7. judicial principles developed by the Supreme Court and High Courts.

[8] *Id.* at 116–17.

The secular maintenance remedy now appears under section 144 BNSS, which corresponds substantially to the earlier section 125 of the Code of Criminal Procedure 1973 ("CrPC"). The BNSS came into force on 1 July 2024, and section 144 expressly deals with orders for maintenance of wives, children and parents.[9]

The DV Act adds a further and frequently invoked layer. An aggrieved woman may apply to a Magistrate under section 12, and section 20(1)(d) empowers the Magistrate to award maintenance for her and her children, including an order under or in addition to an order under section 125 CrPC. Section 20(2) requires such relief to be "adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed", and section 20(6) allows the Magistrate to direct the respondent's employer or debtor to pay the aggrieved person directly. *Rajnesh v. Neha* drew on section 20(2) in formulating its criteria for quantum and listed section 20(6) among the modes of enforcing maintenance orders.[10]

The position of spouses married under the SMA or governed by Parsi or Christian matrimonial law is comparable but not identical. Sections 36 and 37 SMA and sections 36 and 37 IDA provide for alimony pendente lite and permanent alimony in favour of the wife alone, whereas sections 39 and 40 PMDA, like sections 24 and 25 HMA, extend both remedies to either spouse.[11] Table 1 maps the principal remedies by trigger, forum, claimant and stage.

[9] Bharatiya Nagarik Suraksha Sanhita §§ 144–46; Code of Criminal Procedure, 1973, § 125, No. 2, Acts of Parliament, 1974 (India).
[10] Protection of Women from Domestic Violence Act, 2005, §§ 12, 20(1)(d), 20(2), 20(6), No. 43, Acts of Parliament, 2005 (India); *Rajnesh*, (2021) 2 S.C.C. 324, ¶¶ 77–93 (quantum); *id.* pt. B(V) (enforcement).
[11] Special Marriage Act, 1954, §§ 36–37, No. 43, Acts of Parliament, 1954 (India); Parsi Marriage and Divorce Act, 1936, §§ 39–40, No. 3, Acts of Parliament, 1936 (India); Indian Divorce Act, 1869, §§ 36–37, No. 4, Acts of Parliament, 1869 (India).

Table 1: Principal Maintenance Remedies in Indian Law

Remedy	Trigger	Forum	Who may claim	Stage
HMA, s. 24	Pending HMA proceeding; insufficient independent income	District Court / Family Court	Either spouse	Pendente lite
HMA, s. 25	Passing of a decree under the HMA, or subsequently	District Court / Family Court	Either spouse	Permanent
HAMA, s. 18	Subsisting Hindu marriage; separate residence on statutory grounds	Civil Court / Family Court	Wife only	During marriage
BNSS, s. 144 (CrPC, s. 125)	Neglect or refusal to maintain a person unable to maintain herself or himself	Magistrate / Family Court	Wife (including a divorced wife who has not remarried), children, parents	During marriage and after divorce; interim and final
DV Act, ss. 12, 20	Domestic violence in a domestic relationship	Magistrate	Aggrieved woman and her children	During or after the relationship; interim and final

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Remedy	Trigger	Forum	Who may claim	Stage
SMA, ss. 36, 37	Proceeding or decree under the SMA	District Court / Family Court	Wife only	Pendente lite; permanent
PMDA, ss. 39, 40	Suit or decree under the PMDA	Parsi Matrimonial Court	Either spouse	Pendente lite; permanent
IDA, ss. 36, 37	Suit, or decree of dissolution or judicial separation, under the IDA	District Court / Family Court	Wife only	Pendente lite; permanent
MWPRD Act, ss. 3, 4	Divorce of a Muslim woman	Magistrate	Divorced Muslim woman	Provision within iddat; post-iddat liability of relatives or Wakf Board

The statutory framework therefore combines personal-law remedies with a secular remedy intended to prevent neglect and destitution.

This creates an important conceptual distinction. Maintenance under a matrimonial statute may be connected with the rights and obligations created by marriage and the proceedings under that particular statute. Section 144 BNSS, by contrast, is principally concerned with preventing a person from being left without adequate means of subsistence due to neglect or refusal to maintain.

The availability of different remedies is valuable because matrimonial disputes do not always occur in the same form. A spouse may require financial assistance while

matrimonial proceedings are pending. A divorced spouse may require permanent support. A person may also require a summary remedy against neglect.

The difficulty is therefore not necessarily the existence of several remedies. The difficulty is ensuring that they work together in a manner which protects legitimate claims without producing unnecessary duplication.

VI. MAINTENANCE UNDER THE HINDU MARRIAGE ACT 1955

A. Section 24: Maintenance During Matrimonial Proceedings

Section 24 of the HMA provides for maintenance pendente lite and expenses of proceedings. Where either the wife or the husband does not have sufficient independent income to support himself or herself and meet the necessary expenses of the proceeding, the court may direct the respondent to pay a reasonable amount.[12] A proviso inserted in 2001 requires such an application to be disposed of, as far as possible, within sixty days from the date of service of notice on the respondent, a requirement considered further in Section XXI.

The gender-neutral language of section 24 is important. It recognises that economic dependence during matrimonial litigation is not necessarily limited to women.

The purpose of the provision is not to provide permanent financial support. It is to ensure that lack of independent income does not place one party at an unfair disadvantage during matrimonial proceedings.

This has an important connection with access to justice. A person who cannot afford basic expenses or legal proceedings may technically possess a legal right but may still be unable to effectively exercise that right. Section 24 therefore performs both a financial and procedural function.

At the same time, the amount must remain reasonable. The purpose is not to provide an unlimited financial benefit merely because one party earns more. The court must examine the actual financial position of both parties.

[12] Hindu Marriage Act § 24.

B. Section 25: Permanent Alimony and Maintenance

Section 25 of the HMA deals with permanent alimony and maintenance. It enables the court, at the time of passing a decree or subsequently, to order payment of a gross sum or a monthly or periodical amount to either the wife or the husband.[13]

The provision is significant because it moves beyond the traditional assumption that only the wife can be economically dependent. Either spouse may seek relief where the statutory requirements are satisfied.

Section 25 also gives the court considerable discretion. The court may consider the income and property of the applicant and respondent, their conduct and other circumstances of the case. The order may be secured by creating a charge on immovable property where appropriate.[14]

The possibility of modification is equally important. Section 25(2) permits the court, at the instance of either party, to vary, modify or rescind the order where there is a change in the circumstances of either party. Section 25(3) is more specific: where the court is satisfied that the recipient has remarried or, if the recipient is the wife, that she has not remained chaste or, if the recipient is the husband, that he has had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, vary, modify or rescind the order as it deems just. As originally enacted, section 25(3) required the court to rescind the order in these circumstances; the Marriage Laws (Amendment) Act 1976 replaced that mandatory rule with a discretion.[15] The conduct ground is, however, worded differently for the wife and the husband, an asymmetry that sits uneasily with the otherwise gender-neutral design of sections 24 and 25 and is considered in Section XVI.

This demonstrates why maintenance should not be understood as an unconditional transfer of wealth. The financial circumstances of the parties may change after an order is made. A person may lose employment, acquire additional dependants or

[13] *Id.* § 25(1).
[14] *Id.* § 25(1).
[15] *Id.* § 25(2)–(3); Marriage Laws (Amendment) Act, 1976, § 18, No. 68, Acts of Parliament, 1976 (India).

suffer a substantial change in earning capacity. Similarly, the financial position of the recipient may improve.

A fair maintenance system must therefore be capable of responding to change.

VII. MAINTENANCE UNDER THE HINDU ADOPTIONS AND MAINTENANCE ACT 1956

Section 18 of HAMA provides a Hindu wife with a statutory right to maintenance from her husband during her lifetime, subject to the conditions prescribed by the Act.[16] It also recognises circumstances in which a wife may live separately without losing her right to maintenance.

These circumstances include desertion, cruelty, the husband's having another wife, certain circumstances involving a concubine, conversion and other recognised grounds. Section 18 is conceptually different from section 25 HMA. Section 18 creates a substantive right of a Hindu wife to maintenance during the marriage, whereas section 25 operates within the framework of proceedings under the HMA and concerns permanent alimony and maintenance.

This distinction demonstrates that maintenance law is not restricted to the period following divorce. Financial obligations may arise during marriage, during separation, during matrimonial proceedings and after divorce, depending upon the applicable statutory framework.

At the same time, the coexistence of gender-specific provisions such as section 18 HAMA and gender-neutral provisions such as sections 24 and 25 HMA raises a broader question about the direction of Indian maintenance law. Formal gender neutrality may be appropriate in some contexts, but it should not result in ignoring actual economic inequalities between spouses.

[16] Hindu Adoptions and Maintenance Act § 18.

VIII. THE SECULAR REMEDY UNDER SECTION 144 BNSS

Section 144 BNSS provides a secular remedy for maintenance of wives, children and parents in the circumstances specified by the provision.[17] It is substantially the successor provision to section 125 CrPC.

The importance of the provision lies in its social purpose. It is not dependent upon the personal law of the parties. Its primary objective is to prevent neglect and destitution.

This secular character became particularly important in the context of Muslim women's maintenance rights.

The Supreme Court in *Mohd. Ahmed Khan v. Shah Bano Begum* held that the secular maintenance remedy under section 125 CrPC could be invoked by a divorced Muslim woman who was unable to maintain herself.[18] The judgment made an important distinction between personal-law obligations and a secular remedy directed towards preventing destitution.

The legal development that followed *Shah Bano* demonstrates the continuing tension between personal law and secular family-law remedies. Parliament enacted the MWPRD Act in 1986, but subsequent judicial interpretation ensured that the legislation did not reduce the protection available to divorced Muslim women in the manner initially feared by some commentators.

The present framework must also be understood in light of the replacement of section 125 CrPC by section 144 BNSS. The statutory numbering has changed, but the underlying secular maintenance mechanism continues to occupy an important position in Indian family law.[19]

[17] Bharatiya Nagarik Suraksha Sanhita § 144.
[18] *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 S.C.C. 556, [1985] 3 S.C.R. 844, 854–56, 859 (India).
[19] Bharatiya Nagarik Suraksha Sanhita § 144; Code of Criminal Procedure § 125.

IX. FROM *SHAH BANO* TO *MOHD. ABDUL SAMAD*: THE DEVELOPMENT OF MUSLIM WOMEN'S MAINTENANCE RIGHTS

A. Mohd. Ahmed Khan v. Shah Bano Begum

Shah Bano remains one of the most important decisions in the development of maintenance law in India.

The central issue was whether a divorced Muslim woman could claim maintenance under section 125 CrPC. The Supreme Court treated section 125 as a secular provision intended to prevent destitution and held that its application was not excluded merely because the parties were governed by Muslim personal law.[20]

The importance of *Shah Bano* therefore lies not merely in its outcome. It established a broader principle that a secular social-justice remedy cannot automatically be displaced by personal-law considerations.

B. The Muslim Women (Protection of Rights on Divorce) Act 1986

The political controversy following *Shah Bano* resulted in the enactment of the MWPRD Act.

Section 3 provides rights to a divorced Muslim woman including a reasonable and fair provision and maintenance, together with rights relating to mahr and properties delivered to her at or after marriage.[21]

The wording of the statute, particularly the reference to provision and maintenance to be made and paid within the iddat period, created significant questions regarding the duration and extent of the husband's financial obligation.

Those questions were subsequently addressed by the Supreme Court.

C. Sections 4 and 5 of the 1986 Act and the Adjustment of Overlapping Awards

Section 3 does not exhaust the scheme of the 1986 Act. Section 4 provides that where a divorced woman who has not remarried is unable to maintain herself after the iddat

[20] *Shah Bano*, [1985] 3 S.C.R. at 854–56, 859.
[21] Muslim Women (Protection of Rights on Divorce) Act § 3.

period, the Magistrate may order the relatives who would be entitled to inherit her property to pay reasonable maintenance in proportion to their shares and, where such relatives are unable to pay, may direct the State Wakf Board to do so. Section 5 permits the divorced woman and her former husband, by affidavit or written declaration filed at the first hearing, to opt to be governed by sections 125 to 128 CrPC.[22]

The Code, for its part, contains its own safeguard against double payment. Section 127(3)(b) CrPC, now section 146(3)(b) BNSS, requires the Magistrate to cancel an order in favour of a divorced woman who has received, before or after the order, the whole of the sum payable on divorce under the customary or personal law applicable to the parties.[23] As Section XII explains, it is this adjustment mechanism, rather than any exclusion of the secular remedy, through which the Supreme Court has reconciled the two regimes.

X. DANIAL LATIFI: MAINTENANCE BEYOND THE IDDAT PERIOD

In *Danial Latifi v. Union of India*, a Constitution Bench considered the constitutional validity and interpretation of the MWPRD Act.[24]

The central difficulty concerned the meaning of the obligation to make a "reasonable and fair provision and maintenance" within the iddat period.

The Supreme Court interpreted the provision in a manner which preserved the constitutional validity of the legislation. It held that the husband's obligation was not limited to providing maintenance only for the period of iddat. Instead, a reasonable and fair provision for the future of the divorced woman had to be made within the iddat period.[25]

The distinction is important. The iddat period was treated as the period within which the husband was required to make the necessary provision, rather than necessarily as the period limiting the financial benefit of that provision.

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[22] *Id.* §§ 4–5.
[23] Code of Criminal Procedure § 127(3)(b); Bharatiya Nagarik Suraksha Sanhita § 146(3)(b).
[24] *Danial Latifi v. Union of India*, (2001) 7 S.C.C. 740 (India).
[25] *Id.* ¶¶ 28–29, 36.

The decision therefore avoided a narrow interpretation which could have left a divorced woman without adequate long-term financial security.

More importantly, *Danial Latifi* demonstrates the role of constitutional interpretation in family law. The Court did not simply choose between personal law and statutory law. It interpreted the statutory scheme in a manner that attempted to protect the economic security of divorced women while preserving the legislation.

XI. MOHD. ABDUL SAMAD V. STATE OF TELANGANA: THE CONTINUING SECULAR REMEDY

The law was further clarified in *Mohd. Abdul Samad v. State of Telangana*.[26] The appellant, against whom interim maintenance had been ordered under section 125 CrPC in favour of his divorced wife, contended that the 1986 Act, as a special law, excluded that remedy. In separate but concurring judgments, Nagarathna J. and Masih J. rejected the contention, holding that the 1986 Act does not displace or exclude section 125 CrPC and that the two remedies co-exist.[27] Masih J. further held that an election under section 5 of the 1986 Act is not a precondition to invoking section 125.[28] The decision is consistent with *Shabana Bano v. Imran Khan*, which held that a divorced Muslim woman may claim maintenance under section 125 even after the iddat period, so long as she does not remarry.[29]

The Court's reasoning on overlapping awards is equally significant. Masih J. treated section 127(3)(b) CrPC as operating in the nature of a proviso to section 125: a husband who relies on a payment made under personal or customary law may invoke it only where that payment is a "reasonable substitute" for maintenance under section 125, and even then the secular award may be reduced only to the extent of the "deemed double benefit".[30] Nagarathna J. likewise held that orders passed under the 1986 Act are to be taken into consideration under section 127(3)(b), so that the rights conferred

[26] *Mohd. Abdul Samad v. State of Telangana*, Crim. App. No. 2842 of 2024, 2024 INSC 506, [2024] 7 S.C.R. 1236 (India July 10, 2024).
[27] *Id.* ¶¶ 28–29 (Masih, J.).
[28] *Id.* ¶¶ 19–20 (Masih, J.).
[29] *Shabana Bano v. Imran Khan*, (2010) 1 S.C.C. 666 (India).
[30] *Mohd. Abdul Samad*, 2024 INSC 506, ¶¶ 32–36 (Masih, J.); *id.* ¶ 30 (Nagarathna, J., concurring).

by that Act operate in addition to, and not in derogation of, the right under section 125.[31]

In the author's view, the significance of *Mohd. Abdul Samad* extends beyond its facts. Section 144 BNSS now occupies the position of section 125 CrPC, and section 146(3)(b) BNSS reproduces section 127(3)(b), so the reasoning applies equally under the new Code.[32] The decision indicates that personal-law and secular remedies are best understood as co-existing frameworks rather than mutually exclusive options. A claimant may pursue every remedy that the statutes make available, but the total quantum must be calibrated with reference to amounts already paid or awarded. Adjustment, rather than exclusion, is therefore the appropriate response to overlapping claims.

XII. THE REAL PROBLEM: HOW SHOULD MAINTENANCE BE QUANTIFIED?

While the question of eligibility for maintenance is sometimes contentious, the real challenge is usually the quantification of maintenance. Indian law does not leave this question unguided. Section 23(2) HAMA directs the court to have regard to the position and status of the parties, the reasonable wants of the claimant, whether a claimant living separately is justified in doing so, the claimant's property and income and the number of persons entitled to maintenance, while section 20(2) of the DV Act requires monetary relief to be adequate, fair, reasonable and consistent with the standard of living to which the claimant is accustomed.[33]

In *Rajnesh v. Neha*, the Supreme Court drew on these provisions to set out non-exhaustive criteria for quantum, including the status of the parties, the reasonable needs of the wife and dependent children, the qualifications and employment status of the parties, independent income and assets, the standard of living in the matrimonial home, employment sacrifices made for family responsibilities,

[31] *Id.* ¶ 37 (Masih, J.); *id.* ¶¶ 28–30 (Nagarathna, J., concurring).
[32] Bharatiya Nagarik Suraksha Sanhita §§ 144, 146(3)(b).
[33] Hindu Adoptions and Maintenance Act § 23(2); Protection of Women from Domestic Violence Act § 20(2).

reasonable litigation costs and the financial capacity, obligations and liabilities of the husband; it also endorsed the factors identified by the Delhi High Court in *Bharat Hegde v. Saroj Hegde*.[34] Later decisions have applied these criteria. In *Kiran Jyot Maini v. Anish Pramod Patel*, the Court reiterated them and held that permanent alimony should not be penal but should secure a decent standard of living for the dependent spouse;[35] in *Rakhi Sadhukhan v. Raja Sadhukhan*, it enhanced permanent alimony to reflect the standard of living the wife enjoyed during the marriage;[36] and in *Anamika Jain v. Dr. Atul Jain*, it held that the duty to maintain does not end merely because the wife is educated.[37]

The difficulty, therefore, is not an absence of criteria. Courts already possess a well-developed set of statutory and judge-made factors, but these are applied without any stated weighting or method, so that similarly placed claimants may receive markedly different awards.

Indian statutes do not stipulate a particular formula that may be uniformly applied. That is perhaps because marriages are dissimilar, and the maintenance claims pertain to a range of relevant factors, including the respective income-earning capacity and needs of the claimant and defendant, the number of children, the liabilities of either party, and so forth.

A fixed percentage is likely to be unfair, especially in cases where one party has a substantially higher income but also greater financial obligations.

Simultaneously, a claimant who has considerable hidden income should not be able to manipulate the system to get a larger share.

In other words, the court would need to consider a range of factors while determining the quantum of maintenance to be paid.

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[34] *Rajnesh*, (2021) 2 S.C.C. 324, ¶¶ 77–93; *see id.* ¶ 78 (general factors); *id.* ¶ 84 (factors identified in *Bharat Hegde v. Saroj Hegde*).
[35] *Kiran Jyot Maini v. Anish Pramod Patel*, 2024 INSC 530, [2024] 7 S.C.R. 942, ¶¶ 25–26, 32 (India July 15, 2024).
[36] *Rakhi Sadhukhan v. Raja Sadhukhan*, Civ. App. No. 10209 of 2024, 2025 INSC 789, ¶ 7 (India May 29, 2025).
[37] *Anamika Jain v. Dr. Atul Jain*, SLP (C) No. 5220 of 2024, 2026 LiveLaw (SC) 111, ¶¶ 10–11 (India Jan. 28, 2026).

Drawing on these statutory and judicial sources, the relevant factors may be summarised as follows:[38]

1. the income and earning capacity of both the claimant and defendant;
2. independent property and assets;
3. the standard of living;
4. domestic and childcare contributions;
5. the needs and financial requirements of the claimant;
6. the age and health of both parties;
7. the duration of marriage;
8. educational and professional qualifications;
9. responsibilities towards parents and other family members;
10. any liabilities admissible under evidence;
11. conduct relevant to the claim under the applicable statute; and
12. potential for financial self-sufficiency.

In *Jasbir Kaur Sehgal v. District Judge, Dehradun*, the Supreme Court indicated that the status of the parties and the reasonable needs of the claimant had to be taken into account while determining maintenance.[39]

In *Manish Jain v. Akanksha Jain*, the Supreme Court, dealing with maintenance pendente lite under section 24 of the HMA, emphasised the status of the parties, the claimant's independent income and the capacity of the other spouse to pay.[40]

The Court also held that it is no answer to a claim for maintenance that the claimant is educated and could support herself, and that the financial position of the claimant's parents is immaterial.[41]

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[38] *See* Hindu Adoptions and Maintenance Act § 23(2); Protection of Women from Domestic Violence Act § 20(2); *Rajnesh*, (2021) 2 S.C.C. 324, ¶¶ 78, 84; *Kiran Jyot Maini*, 2024 INSC 530, ¶¶ 24–25.
[39] *Jasbir Kaur Sehgal v. Dist. Judge, Dehradun*, (1997) 7 S.C.C. 7, ¶ 8 (India).
[40] *Manish Jain v. Akanksha Jain*, (2017) 15 S.C.C. 801, ¶ 15 (India).
[41] *Id.*

This is important: income-earning capacity should not be mechanically estimated on the basis of educational qualifications.

A person might have a postgraduate degree but limited scope for employment due to prolonged unemployment or other factors.

XIII. RAJNESH V. NEHA AND THE NEED FOR FINANCIAL TRANSPARENCY

The Supreme Court's ruling in *Rajnesh v. Neha* is among the most significant developments in Indian maintenance law in recent times.[42]

The Supreme Court has sought to grapple with a range of recurring issues in maintenance law, including defaults, delays in payment, and the inadequacy of disclosure of income and assets by either party.

The Court mandated that both the claimant and defendant submit affidavits regarding their assets and liabilities.[43]

Such disclosure is crucial to ensuring that either party can obtain the required maintenance or can successfully challenge the quantum of maintenance demanded. In many ways, financial disclosure by both parties is a safeguard for both the claimant and defendant.

For instance, the claimant's right to maintenance should not be defeated by the defendant's ability to conceal assets and income.

Simultaneously, the defendant is not liable to pay maintenance on the basis of inflated figures.

This is particularly relevant in cases of self-employment, wherein a person's reported income may be significantly lesser than his or her actual income.

The same logic applies to investment income, professional fees, and other assets that might be hidden by the defendant.

[42] *Rajnesh*, (2021) 2 S.C.C. 324, ¶ 72.
[43] *Id.* ¶ 72.1(a).

On the other hand, a claimant's income should also be demonstrated to the court, if applicable. The disclosure forms must therefore be seen as a tool of transparency and fairness.

The increased transparency would also reduce the number of disputes: once the income and assets of both parties have been placed on the record, the court can decide the quantum of maintenance and explain its reasoning clearly.

XIV. THE IMPORTANCE OF UNPAID DOMESTIC WORK

A purely income-based estimation of maintenance can sometimes fail to consider the unpaid domestic work that may have gone into sustaining the marriage.

There is likely to be a division of labour within a marriage, wherein one spouse supports the family by working outside while the other manages the household and childcare.

It is evident that the person managing the household is contributing to the marriage in a manner that enables the other person to sustain employment.

That person's services, though unpaid, have value: he or she creates conditions for the other to earn.

Unpaid domestic work should therefore be taken into account when determining the financial needs of the claimant.

It is not necessary that the unpaid work be compensated directly, but the loss of potential earnings should be factored into the estimation of maintenance.

That said, it is also true that it would be impossible to estimate the value of every single task performed by the domestic worker.

A more pragmatic approach would be to consider the financial position of both parties while keeping in mind that the domestic worker has made sacrifices that have allowed the other person to maintain a particular standard of living. This is particularly

relevant in cases where one of the parties has given up a career to stay at home.[44] The law must also recognize the long-term consequences of such sacrifice.

A person who cannot return to the workforce immediately after the dissolution of marriage will have lesser income-earning capacity for a certain period of time.

XV. GENDER NEUTRALITY: FORMAL EQUALITY AND ECONOMIC REALITY

Traditional concepts of maintenance have been predicated on the idea that the husband is the breadwinner while the wife is the homemaker. The law has since evolved, and both men and women are now able to earn comparable incomes. A wife can therefore potentially earn more than her husband. Men can also find themselves in the position of needing financial support, for instance, if they are forced to look after their children and are unable to pursue gainful employment.

Sections 24 and 25 HMA do not distinguish between a husband and wife when it comes to claiming or paying maintenance.[45] The neutrality is not complete, however: section 25(3) frames the conduct ground for varying or rescinding an order differently for a wife, who must not have "remained chaste", and a husband, who must have "had sexual intercourse with any woman outside wedlock". However, gender neutrality should not be conflated with gender blindness: the economic realities of men and women must be taken into account.

At present, women are more likely to suffer a financial setback due to marriage, particularly if they give up employment to look after their children. A man is less likely to suffer similar consequences, but there is no guarantee that he will not be placed in a vulnerable position. The ideal approach would be to evaluate the needs and financial standing of the claimant, rather than adhering to the idea that men and women are economically equal. The question should not be framed around whether

[44] *See Danial Latifi*, (2001) 7 S.C.C. 740, ¶ 20; *Mohd. Abdul Samad*, 2024 INSC 506, ¶ 10 (Nagarathna, J., concurring).
[45] Hindu Marriage Act §§ 24–25.

the claimant is a man or a woman, but whether there is a demonstrable need for financial support.

XVI. MULTIPLE REMEDIES AND THE POSSIBILITY OF DOUBLE RECOVERY

Multiple remedies can co-exist, but a double remedy would require coordination. As noted earlier, there are several laws pertaining to different kinds of maintenance. A claimant can therefore seek remedies under different statutes, depending on the particular circumstances. The same applies to a defendant, who may have to pay maintenance under different statutes. The availability of multiple remedies should not be a concern as long as the objective fairness is maintained. It should also be noted that different statutes have different objectives. The concern arises when either party is required to pay more than one maintenance order in similar circumstances, without any consideration for the financial status of either party.

Rajnesh v. Neha tackled this issue by requiring the applicant in a subsequent maintenance proceeding to disclose the previous proceeding and the orders passed in it, so that the later court may adjust or set off the amount already awarded; any modification of the earlier order must be sought in the proceeding in which it was made.[46] The direction is particularly important where a claim under section 20(1)(d) of the DV Act, which expressly permits maintenance in addition to an order under section 125 CrPC, runs alongside proceedings under section 144 BNSS or a matrimonial statute. In such cases set-off, rather than an election between remedies, is the means of preventing double recovery. This would ensure that the quantum of maintenance is reasonable.

The orders passed by the courts in both cases should be scrutinized in order to arrive at a figure that is not excessive, taking into account the period of marriage, the financial status of the claimant and defendant, and so on. It is important to note that *Rajnesh v. Neha* does not prohibit multiple remedies, but merely advocates for the necessity for coordination. A person should not have to choose between remedies

[46] *Rajnesh*, (2021) 2 S.C.C. 324, ¶¶ 60–61.

simply on the grounds that another statute exists, so long as either statute independently provides the required relief.

XVII. THE RESPONSIBILITY OF THE PERSON PAYING MAINTENANCE

When discussing the rights of the claimant, it is also important to keep in mind the rights of the person liable to pay maintenance. *Rajnesh v. Neha* directs the court to consider the payer's actual income, the reasonable expenses for his or her own maintenance, the dependants he or she is obliged to support and any liabilities, and to weigh these against the claimant's needs.[47]

Not every liability, however, carries equal weight. In *Deepa Joshi v. Gaurav Joshi*, the Supreme Court held that the duty to maintain a spouse is a primary obligation, and that repayments on loans taken to create or acquire assets are in the nature of capital investment rather than unavoidable expenditure; such voluntary financial commitments cannot substantially reduce the maintenance payable.[48] By contrast, obligations that the payer cannot avoid, such as the support of dependent children or aged parents and genuine medical needs, may legitimately be weighed against the claimant's needs.

It must also be borne in mind that the objective of maintenance is to prevent destitution and secure a dignified life, not to enable either party to live a life of luxury,[49] and that maintenance is not intended to penalise the payer.[50] The law must be sensitive to the circumstances of both the claimant and payer: one cannot follow a mechanical formula that reduces the income of the payer to the barest minimum.

The principle may therefore be stated as follows: the payer's genuine and unavoidable obligations reduce the amount available for maintenance, but obligations voluntarily assumed cannot be used to leave the claimant without adequate support.

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[47] *Rajnesh*, (2021) 2 S.C.C. 324, ¶ 80.
[48] *Deepa Joshi v. Gaurav Joshi*, Crim. App. arising out of SLP (Crl.) No. 15662 of 2025, 2026 INSC 370 (India Apr. 16, 2026).
[49] *See Mohd. Abdul Samad*, 2024 INSC 506, ¶¶ 9, 11 (Nagarathna, J., concurring).
[50] *Kiran Jyot Maini*, 2024 INSC 530, ¶ 32.

XVIII. MAINTENANCE, REMARRIAGE AND CHANGE IN CIRCUMSTANCES

Maintenance is not an entitlement that lasts forever. The HMA permits an order for permanent alimony and maintenance under section 25 to be varied, modified or rescinded at the instance of either party on a change in circumstances, and section 25(3) further empowers the court, at the instance of the other party, to vary, modify or rescind the order where the recipient has remarried.[51]

Similarly, section 146(1) BNSS permits the Magistrate to alter an allowance on proof of a change in the circumstances of the person receiving or paying it. Section 146(3) goes further in the case of a divorced woman: the order must be cancelled if she has remarried, if she has received the whole of the sum payable on divorce under the customary or personal law applicable to the parties, or if she has voluntarily surrendered her rights to maintenance after divorce. Where a divorced Muslim woman has received a sum under the 1986 Act, *Mohd. Abdul Samad* indicates that the secular award is to be adjusted to the extent of the double benefit rather than defeated altogether.[52]

This is a pragmatic approach, as it acknowledges the fluidity of financial conditions. It must be recalled that maintenance is a financial support mechanism: it aims to provide the claimant with the resources to meet his or her basic necessities of life. A recipient of maintenance who acquires new skills, secures employment or inherits property may find his or her entitlement reduced accordingly. The same logic applies to the payer: if he or she acquires new skills or inherits property, or if his or her income decreases significantly, his or her maintenance payments should also be adjusted. The ability to vary maintenance is also important from a theoretical standpoint. As Nagarathna J. observed in *Mohd. Abdul Samad*, the object of maintenance proceedings is rehabilitative and not punitive,[53] and in *Kiran Jyot Maini* the Court emphasised that

[51] Hindu Marriage Act § 25(2)–(3).
[52] Bharatiya Nagarik Suraksha Sanhita § 146(1), (3); *Mohd. Abdul Samad*, 2024 INSC 506, ¶ 36 (Masih, J.).
[53] *Mohd. Abdul Samad*, 2024 INSC 506, ¶ 9 (Nagarathna, J., concurring).

permanent alimony should not be penal but should ensure a decent standard of living for the dependent spouse.[54]

An award that responds to the parties' changing circumstances is consistent with that object: it supports the claimant for as long as, and to the extent that, support is needed, rather than operating as a sanction on the payer.

XIX. WHY A FIXED PERCENTAGE FORMULA IS NOT THE COMPLETE ANSWER

There is a temptation to adopt a uniform percentage-based approach to the quantification of maintenance. Such an approach may seem appealing because of its simplicity and objectivity. The formula may be applied mechanically to every claim, regardless of the needs and financial standing of the claimant and the payer. It must be noted, however, that a percentage-based approach is not really objective: it fails to take into account the financial standing of either party. Two people with identical salaries may have very different needs, and one of them may have dependants who need to be taken into account as well. The percentage-based approach may work within a specific context, but there is no reason to believe that it should be uniformly applied. A judge must therefore consider a range of factors when determining maintenance.

This does not mean that a judge cannot adopt a percentage-based approach when estimating the maintenance liability of the payer. What it does mean is that the judge must state the reasons for adopting that particular approach, and for estimating the maintenance liability in accordance with those reasons. A reasoned order will facilitate future adjustments, if necessary. It is also important that the maintenance order sets out the financial position of the claimant, the financial position of the payer, the reasons for varying the order, the basis for estimating the maintenance liability, and any other relevant factors.

[54] *Kiran Jyot Maini*, 2024 INSC 530, ¶ 32.

XX. PROCEDURAL EFFICIENCY: A RIGHT DELAYED MAY BECOME A RIGHT DENIED

One of the challenges in maintenance litigation pertains to the issue of delay. The law provides for maintenance to help a person meet his or her basic needs. A dispute over the quantum of interim maintenance can therefore cause severe hardship to the claimant. The law must strive to expedite maintenance proceedings to ensure that the claimant is not kept waiting for an extended period of time. At the same time, the procedural efficiency must not come at the cost of the rights of the payer. The disclosure norms discussed earlier can facilitate expedited proceedings because they reduce the number of disputes over the quantum of maintenance.

The law already recognises the need for speed. The proviso to section 24 HMA and the third proviso to section 144(1) BNSS each require applications for interim maintenance and expenses to be disposed of, as far as possible, within sixty days of service of notice.[55] *Rajnesh v. Neha* added its own timetable: the respondent must file the affidavit of disclosure within a maximum of four weeks, with no more than two opportunities, and the court should endeavour to decide the interim application by a reasoned order within four to six months of the affidavits being filed.[56]

The difficulty is therefore not the absence of a rule but non-compliance with existing rules. In *Aditi v. Jitesh Sharma*, the Supreme Court noted that courts below were still fixing interim and final maintenance without affidavits of disclosure on record, and directed that *Rajnesh v. Neha* be re-circulated to all judicial officers and judicial academies.[57] A maintenance order passed after several years may be of little practical value to a claimant who has already suffered hardship due to the delay. The remedy lies in enforcement: High Courts could require family courts and Magistrates to report periodically on the disposal of interim applications, and to record reasons whenever an application is not decided within the prescribed period.

[55] Hindu Marriage Act § 24 (proviso); Bharatiya Nagarik Suraksha Sanhita § 144(1) (third proviso).
[56] *Rajnesh*, (2021) 2 S.C.C. 324, ¶¶ 72.3(c), 72.10(j).
[57] *Aditi v. Jitesh Sharma*, Crim. App. No. 3446 of 2023, 2023 INSC 981, ¶¶ 14, 16 (India Nov. 6, 2023).

XXI. MAINTENANCE AS A QUESTION OF CONSTITUTIONAL VALUES

Maintenance law also has a constitutional dimension. Article 14 guarantees equality before law and equal protection of laws, while Article 15 prohibits discrimination on specified grounds (including sex) and Article 15(3) permits the State to make special provision for women and children, which supplies the constitutional basis for wife-specific maintenance remedies. Article 21 protects life and personal liberty, and the Supreme Court has repeatedly interpreted it as including the right to live with dignity.[58] In *Danial Latifi*, the Constitution Bench held that the 1986 Act, as interpreted by it, does not offend Articles 14, 15 and 21.[59]

Economic insecurity following matrimonial breakdown can directly impact upon these values. A spouse who has sacrificed employment or professional opportunities for the family may face serious economic consequences post-separation. The law cannot entirely reverse the economic consequences of marriage, but maintenance can reduce the risk of severe economic vulnerability.

At the same time, in the author's view, constitutional dignity is not limited to the claimant. The person directed to pay maintenance is equally entitled to live with dignity, and the Supreme Court has recognised that maintenance law must strike a fair balance that avoids imposing oppressive or punitive financial hardship on the payer.[60] The law therefore should avoid an approach in which the payer's entire financial capacity is treated as available for transfer. The constitutional objective is therefore not simply redistribution. It is fairness in the distribution of the economic consequences of matrimonial breakdown.

This is why proportionality becomes important. Borrowing the structure of the constitutional proportionality test, a maintenance order may be assessed by asking whether it pursues a legitimate aim, namely preventing destitution and securing the

[58] India Const. arts. 14, 15(1), 15(3), 21; *Francis Coralie Mullin v. Adm'r, Union Territory of Delhi*, (1981) 1 S.C.C. 608, ¶ 8 (India); *see also Danial Latifi*, (2001) 7 S.C.C. 740, ¶ 33.
[59] *Danial Latifi*, (2001) 7 S.C.C. 740, ¶ 36.
[60] *Mohd. Abdul Samad*, 2024 INSC 506, ¶ 11 (Nagarathna, J., concurring).

claimant's dignity; whether the amount is suitable and no greater than necessary to achieve that aim; and whether, on balance, the burden on the payer is proportionate to the benefit secured for the claimant.[61] Applied in this way, proportionality gives structure to the balancing of the claimant's and the payer's interests and underpins the recommendations in Section XXIII.

XXII. SUGGESTIONS AND RECOMMENDATIONS

The preceding discussion suggests that Indian maintenance law requires a more principled approach to quantification. The present framework has developed through different statutes and judicial decisions rather than through one comprehensive maintenance code; this has produced flexibility, but also fragmentation.[62]

A comprehensive formula mechanically applied to every claim is impractical, for the reasons given in Section XX, and it is not necessary to eliminate the existing statutory remedies. What is required is a common set of principles, applicable across maintenance proceedings, through which judicial discretion can be exercised consistently. The following recommendations are offered.

A. Principles Governing the Quantum of Maintenance

1. **Need and Dignity:** The quantum of maintenance should be determined primarily by the reasonable needs of the claimant. The claimant is entitled to sufficient funds to meet his or her basic necessities, and that phrase must be understood to include a reasonable standard of living consistent with the financial capacity of the parties. Maintenance should provide reasonable financial security and should not be reduced to the minimum amount necessary to prevent destitution.
2. **Capacity and Proportionality:** The capacity of the payer should be determined objectively, by considering his or her salary, earning capacity, property and assets, and should not be estimated arbitrarily on the bare

[61] *See Modern Dental Coll. & Rsch. Ctr. v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353, ¶ 60 (India) (setting out the components of the proportionality test).
[62] *See* FLAVIA AGNES, FAMILY LAW VOLUME II: MARRIAGE, DIVORCE, AND MATRIMONIAL LITIGATION (2011); Srimati Basu, *Playing Off Courts: The Negotiation of Divorce and Violence in Plural Legal Settings in Kolkata*, 52 J. Legal Pluralism & Unofficial L. 41 (2006).

assumption that he or she could earn more. The amount awarded should be proportionate to the claimant's reasonable needs and the payer's actual financial capacity, in the sense explained in Section XXII.

3. **Standard of Living:** The standard of living enjoyed during the marriage is an important reference point. *Rajnesh v. Neha* lists the standard of living in the matrimonial home among the relevant factors,[63] and in *Rakhi Sadhukhan* and *Anamika Jain* the Court measured the claimant's entitlement by the standard she enjoyed during the marriage.[64] At the same time, *Kiran Jyot Maini* cautions against awards that are either excessively high or unduly low,[65] and in *Rinku Baheti v. Sandesh Sharda* the Court held that a former spouse cannot be expected to maintain the claimant according to his present, and possibly enhanced, status for life.[66] These authorities are best reconciled by treating the marital standard of living as a reference point, adjusted for the payer's present means and the duration of the marriage, rather than as an entitlement to be replicated in full.
4. **Contribution and Unpaid Work:** Unpaid domestic and caregiving work should be recognised as an economic contribution, and it should affect quantum in two ways. First, where the claimant gave up or curtailed employment for the family, the contribution should extend the transitional period for which support is payable, reflecting the time needed to re-enter the workforce. Secondly, because such work helped the household attain its standard of living, it supports the claimant's claim to share in that standard rather than being confined to subsistence.[67]
5. **Responsibilities:** The payer's responsibilities towards his or her dependants should be considered, so that the order remains realistic. Such responsibilities should not, however, be invoked to the detriment of the

[63] *Rajnesh*, (2021) 2 S.C.C. 324, ¶ 78.
[64] *Rakhi Sadhukhan*, 2025 INSC 789, ¶ 7; *Anamika Jain*, 2026 LiveLaw (SC) 111, ¶ 10.
[65] *Kiran Jyot Maini*, 2024 INSC 530, ¶ 26.
[66] *Rinku Baheti v. Sandesh Sharda*, 2024 INSC 1014 (India Dec. 19, 2024).
[67] *See* KIRTI SINGH, SEPARATED AND DIVORCED WOMEN IN INDIA: ECONOMIC RIGHTS AND ENTITLEMENTS (2013); LAW COMM'N OF INDIA, CONSULTATION PAPER ON REFORM OF FAMILY LAW (Aug. 31, 2018).

claimant's basic needs, and voluntary financial commitments should not be given precedence over the duty to maintain.[68]

6. **Duration and Circumstances of the Marriage:** The duration of the marriage should affect the strength of the claim rather than the assessment of the claimant's needs. A claimant's needs do not diminish merely because the marriage was short; but a short marriage will ordinarily have produced less economic interdependence and fewer sacrifices of earning capacity, and may therefore justify support for a shorter period or at a more modest level than a long marriage in which one spouse devoted many years to the household.
7. **Self-Sufficiency:** The claimant's capacity for self-sufficiency is also relevant. The law must distinguish between a claimant who has the potential to earn and a claimant who cannot do so. A person who was previously employed but can no longer work, for instance because of old age, has a lesser income-earning capacity than a person who is able to work, and the award should reflect that difference. Educational qualifications alone, however, do not establish actual earning capacity.
8. **Gender Neutrality:** Where the statute allows either spouse to claim maintenance, the actual economic circumstances, rather than the gender of the claimant, should determine entitlement. The asymmetric wording of section 25(3) HMA should be reconsidered in that light, while recognising that Article 15(3) supports special provision for women where it responds to actual economic disadvantage.

B. Institutional and Procedural Recommendations

1. **Financial Transparency:** Both parties should disclose relevant income, assets, liabilities and financial responsibilities through the affidavit of disclosure prescribed in *Rajnesh v. Neha*, and courts should not fix interim or final maintenance without it.

[68] *Deepa Joshi*, 2026 INSC 370.

2. **Coordination of Remedies:** Different maintenance proceedings should be coordinated to prevent unjustified double recovery, through mandatory disclosure of earlier proceedings and the adjustment or set-off of amounts already awarded, including awards under section 20(1)(d) of the DV Act and the 1986 Act.
3. **Reasoned Judicial Orders:** Courts should explain the principal factors which led to the amount awarded and the weight given to each, so that the award can be reviewed and later varied on a principled basis.
4. **Change in Circumstances:** Maintenance should remain capable of variation where material circumstances change, under section 25(2) HMA, section 146(1) BNSS and their counterparts. The grounds for varying or cancelling an order on remarriage or conduct, now found in section 25(3) HMA and section 146(3) BNSS, should be applied consistently across statutes and framed in gender-neutral terms.
5. **Procedural Efficiency:** Interim maintenance applications should be decided within the sixty-day period prescribed by statute and the timetable set in *Rajnesh v. Neha*. Compliance should be monitored through periodic reporting by family courts and Magistrates to the High Courts, with reasons recorded for any delay beyond the prescribed period.

These principles can operate without creating a rigid mathematical formula. They would instead provide a common framework for the exercise of judicial discretion.

XXIII. CONCLUSION

The law of alimony and maintenance in India is ultimately concerned with a difficult question of economic fairness. When a matrimonial relationship breaks down, the law has to deal with two different but equally important realities. One spouse may face economic vulnerability because of financial dependence, domestic responsibilities, caregiving or the sacrifice of employment opportunities. At the same time, the other spouse may have legitimate financial responsibilities which cannot simply be ignored.

The development of Indian law from traditional institutions such as stridhana and mahr to the statutory remedies under the HMA, HAMA, BNSS and the MWPRD Act

shows that economic security has always been an important part of matrimonial law. However, these institutions perform different legal functions and should not be treated as interchangeable.

The decisions in *Shah Bano*, *Danial Latifi* and *Mohd. Abdul Samad* demonstrate the continuing relationship between personal law, secular maintenance remedies and constitutional values. The replacement of section 125 CrPC by section 144 BNSS has changed the statutory provision but not the broader importance of the secular maintenance mechanism.[69] The more difficult problem today is not whether maintenance should be available. The Indian legal system already provides several routes through which maintenance can be claimed. The greater difficulty lies in determining the amount fairly.

The absence of a universal formula is understandable because matrimonial relationships cannot be reduced to identical financial calculations. However, wide judicial discretion should not become unpredictable discretion. Courts need a clear set of factors through which the economic circumstances of both parties can be examined. The approach suggested in this article is based upon need, capacity, standard of living, contribution, existing responsibilities, duration of marriage, realistic earning capacity and changes in circumstances. Such an approach would also recognise that economic contribution within marriage is not always visible through income. Domestic labour and caregiving can have long-term economic consequences and should not be ignored merely because they are unpaid.

At the same time, maintenance should not become punitive. The objective is not to transfer the maximum possible amount from the economically stronger spouse. Nor should it be used to permanently maintain a lifestyle which the claimant can reasonably support independently. The principle should instead be one of balance:

Maintenance Should Prevent Economic Vulnerability Without Creating Economic Injustice.

The requirement of financial disclosure developed in *Rajnesh v. Neha* is an important part of this balance because a fair decision requires reliable information. Similarly,

[69] Bharatiya Nagarik Suraksha Sanhita § 144; Code of Criminal Procedure § 125.

coordination between different maintenance proceedings is necessary to protect legitimate claims without resulting in unjustified double recovery. The future development of Indian maintenance law should therefore focus less on deciding whether one spouse deserves more and the other deserves less, and more on identifying the actual economic consequences of the matrimonial relationship.

A spouse should not be left without reasonable financial security merely because his or her contribution to the marriage was unpaid. Equally, a person should not be subjected to an unreasonable financial burden merely because he or she has greater earning capacity. Maintenance is therefore neither a reward for the failure of marriage nor a punishment for the spouse who earns more. It is a legal mechanism through which the economic consequences of matrimonial breakdown are adjusted.

The legitimacy of maintenance law ultimately depends upon its ability to balance two principles which may appear to be in conflict but are not: the right to economic security and the responsibility to pay only what is fair and reasonable. A just maintenance system must recognise both.

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