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# GENDER NEUTRALITY IN SECTION 144 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: A CRITICAL EXAMINATION OF THE STATUTORY DUTY TO PROVIDE MAINTENANCE

**Purva Parab**[*]

## I. ABSTRACT

*Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), which re-enacts Section 125 of the Code of Criminal Procedure, 1973 ("CrPC"), provides a summary remedy under which a person of sufficient means may be ordered to maintain a wife, child or parent who is unable to maintain herself or himself. The duties owed to children and parents already bind a person of either sex. The gender-specific element lies in clause (a) of Section 144(1), which confers a claim only on "his wife"; no corresponding duty is placed on a woman towards a husband who cannot maintain himself. This paper asks whether "wife" in Section 144(1)(a) should be replaced by "spouse" and, if so, with what safeguards, and whether the present asymmetry can be reconciled with the equality guarantees in Articles 14 and 15 of the Constitution. The study is doctrinal. It examines the BNSS and the CrPC, leading Supreme Court decisions on the meaning of "wife" and on the assessment of maintenance, the constitutional jurisprudence under Articles 14, 15(1) and 15(3), and official labour data. The term "maintenance", which neither Code defines, is read in the light of the inclusive definition in the Hindu Adoptions and Maintenance Act, 1956, which guides but cannot be transplanted into BNSS proceedings. It finds that changing social and economic conditions weaken the assumption that the wife is always the financially weaker spouse, but that women's low workforce participation, unequal burden of unpaid care and interrupted careers still justify protective treatment under Article 15(3). It concludes that full gender neutrality is premature. Clearer statutory guidance on the meaning of "unable to maintain", together with a narrow,*

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*needs-based provision for a husband who cannot maintain himself because of disability or serious illness, subject to disclosure safeguards, deserves legislative consideration.*

## II. KEYWORDS

Maintenance; Section 144 BNSS; gender neutrality; Article 15(3); beneficial legislation

## III. INTRODUCTION

Maintenance law exists to give family members who cannot support themselves some measure of financial security. Because family relationships in India remain bound up with social and economic life, the duty of support has long been seen as a moral responsibility as well as a legal obligation. Social change, however, has prompted debate over the gender-specific way in which this remedy is framed.

The duty to support dependants is older than modern legislation and draws on customary and personal-law traditions. In the traditional Hindu family, for instance, the Karta—usually the senior-most male member was regarded as responsible for maintaining the family.[1]

In *Badshah v. Urmila Badshah Godse*, the Supreme Court described Section 125 of the CrPC as a measure of social justice, since claims by destitute or otherwise helpless children and parents concern vulnerable sections of society. The Court accordingly held that the provision calls for a purposive interpretation.[2]

The central issue here is whether Section 144 of the BNSS should keep its present gender-specific form. Section 144(1) does not speak of a "man"; it imposes liability on "any person having sufficient means". Clauses (b) to (d), which concern children and parents, are already gender-neutral as to the person liable, because the masculine pronoun includes the feminine.[3] The asymmetry lies in clause (a), under which only a "wife" may

[1] Satyajeet A. Desai, *Mulla Hindu Law* (LexisNexis, 25th edn., 2024).
[2] *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188.
[3] The General Clauses Act, 1897 (Act 10 of 1897), s. 13; *Vijaya Manohar Arbat v. Kashi Rao Rajaram Sawai*, (1987) 2 SCC 278.

claim against her spouse. The question, therefore, is whether "his wife" in Section 144(1)(a) should give way to "spouse", and with what safeguards. Put differently, would a gender-neutral rule serve equality better, or does the protective rationale behind the existing design still hold?

### A. Research Objectives

1. To examine the scope of the duty of maintenance under Section 144 of the BNSS and the changes it makes to Section 125 of the CrPC.
2. To analyse how the Supreme Court has interpreted the expression "wife" and assessed claims to maintenance.
3. To test the gender-specific design of Section 144(1)(a) against Articles 14, 15(1) and 15(3) of the Constitution.
4. To assess whether, and with what safeguards, the provision should move towards gender neutrality.

### B. Research Questions

1. Does the confinement of clause (a) of Section 144(1) to a "wife" remain justified as a special provision for women under Article 15(3)?
2. Would replacing "wife" with "spouse" advance substantive equality, given the economic disadvantages that women continue to face?
3. What statutory safeguards would be needed if a husband unable to maintain himself were brought within the provision?

### C. Research Methodology

This study is doctrinal and analytical. Its primary sources are the BNSS, the CrPC, related personal and matrimonial statutes, the Constitution of India and judgments of the Supreme Court of India. Its secondary sources are a standard commentary on Hindu law, the report of the Department-related Parliamentary Standing Committee on Home

Affairs on the Bharatiya Nagarik Suraksha Sanhita, 2023,[4] official labour statistics published by the Ministry of Statistics and Programme Implementation, and contemporary legal reporting. The provisions are read in their text and context, judicial interpretation is traced through leading decisions, and the competing claims of formal equality and protective discrimination are evaluated against constitutional principle. The study does not involve empirical fieldwork; statistical data are used only to illustrate the conditions in which the law operates.

## IV. LEGAL FRAMEWORK

Neither the BNSS nor the CrPC defines "maintenance". The Hindu Adoptions and Maintenance Act, 1956 supplies an inclusive definition, under which maintenance covers food, clothing, residence, education and medical attendance and treatment and, for an unmarried daughter, the reasonable expenses of and incidental to her marriage.[5] Because that Act regulates the civil rights and obligations of Hindus, whereas the BNSS provides a secular procedural remedy, the definition cannot simply be transplanted into BNSS proceedings; it remains a useful guide to what the word ordinarily embraces.

Under Section 144 of the BNSS, a Magistrate of the first class may direct a person with sufficient means, who neglects or refuses to maintain the persons the section names, to pay a monthly allowance. Related matters are dealt with in the sections that follow. Section 145, headed "Procedure", governs the place where proceedings may be taken, the recording of evidence, ex parte orders and costs; Section 146 permits the allowance to be altered or the order cancelled when circumstances change; and Section 147 provides for enforcement of the order.[6]

[4] Department-related Parliamentary Standing Committee on Home Affairs, Rajya Sabha, "Two Hundred Forty-Seventh Report on the Bharatiya Nagarik Suraksha Sanhita, 2023" (November 2023).
[5] The Hindu Adoptions and Maintenance Act, 1956 (Act 78 of 1956), s. 3(b).
[6] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), ss. 144–147.

The remedy formerly found in Section 125 of the CrPC now appears in Section 144 of the BNSS.[7]

The provision is attracted where a person having sufficient means neglects or refuses to maintain:

1. His wife, where she is unable to maintain herself;
2. His legitimate or illegitimate child, whether married or not, where the child is unable to maintain itself;
3. His legitimate or illegitimate child who has attained majority, other than a married daughter, where a physical or mental abnormality or injury leaves the child unable to maintain itself; or
4. His father or mother, where either is unable to maintain himself or herself.

Where these conditions are met, the Magistrate may order a monthly allowance for the support of the wife, child, father or mother, according to the facts of the case.

The word "minor", which qualified the child in clause (b) of the corresponding provision of the former Code, does not appear in Section 144 of the BNSS, and the definition of "minor" in the former Explanation has also been omitted. Clause (b) now extends to any legitimate or illegitimate child, whether married or not, who is unable to maintain itself, so that minority is no longer a condition of the claim. Clause (c) continues to provide separately for a child who has attained majority and is disabled by abnormality or injury, and the relationship between the two clauses awaits judicial clarification. The first proviso, which now refers to a "female child" referred to in clause (b), permits the Magistrate to order her father to maintain her until she attains majority if her husband, where she is married, lacks sufficient means.[8]

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[7] The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 125; The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 144.

[8] The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 125(1)(b) and Explanation (a); The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 144(1)(b) and first proviso.

Under the second proviso, interim maintenance and the expenses of the proceeding may be ordered while the proceedings are pending. The third proviso requires an application for interim maintenance to be disposed of, as far as possible, within sixty days from the date of service of notice of the application.[9]

The Explanation to sub-section (1) provides that "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. Sub-section (4) disentitles a wife who is living in adultery, who refuses without sufficient reason to live with her husband, or who lives separately from him by mutual consent, and sub-section (5) requires the Magistrate to cancel the order on proof of any of these circumstances. These provisions already confine the remedy and bear directly on the debate about misuse.[10]

Where a person ordered to pay maintenance fails without sufficient cause to comply, the Magistrate may, for every breach of the order, issue a warrant to levy the amount due in the manner provided for levying fines. For each month's allowance remaining unpaid after the warrant has been executed, the defaulter may be imprisoned for a term which may extend to one month, or until payment if sooner made. No warrant may issue unless an application to levy the amount is made within one year from the date on which it became due.[11] The Supreme Court has held that imprisonment is a mode of enforcing the order, not a mode of satisfying it, so that the liability to pay the arrears survives the sentence.[12]

[9] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 144(1), second and third provisos.
[10] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 144(1), Explanation, and s. 144(4)–(5).
[11] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 144(3) and proviso.
[12] *Kuldip Kaur v. Surinder Singh*, (1989) 1 SCC 405, para 6; *Poongodi v. Thangavel*, (2013) 10 SCC 618.

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# V. JUDICIAL INTERPRETATION: LEADING CASES

## A. Mohd. Ahmed Khan v. Shah Bano Begum

Shah Bano Begum[13] married Mohd. Ahmed Khan, an advocate, in 1932. In 1975 he drove her out of the matrimonial home, and in April 1978 she applied for maintenance under Section 125 of the CrPC. In November 1978 her husband divorced her by an irrevocable talaq and argued that, under Muslim law, his duty to maintain her ended with the iddat period. The Magistrate awarded her Rs. 25 a month, which the High Court of Madhya Pradesh enhanced to Rs. 179.20, and a five-judge Constitution Bench of the Supreme Court dismissed the husband's appeal. It held that the expression "wife" in Section 125(1) includes a divorced woman who has not remarried. The Court also observed: "These provisions are too clear and precise to admit of any doubt or refinement. The religion professed by a spouse or by the spouses has no place in the scheme of these provisions. Whether the spouses are Hindus or Muslims, Christians or Parsis, pagans or heathens, is wholly irrelevant in the application of these provisions."

*Shah Bano* was not the last word. Parliament responded with the Muslim Women (Protection of Rights on Divorce) Act, 1986, which entitled a divorced Muslim woman to a reasonable and fair provision and maintenance to be made and paid within the iddat period.[14] In *Danial Latifi v. Union of India*, a Constitution Bench upheld the 1986 Act but read it to require the husband to make, within the iddat period, a reasonable and fair provision for his former wife's future that extends beyond that period.[15] In *Mohd. Abdul Samad v. State of Telangana*, the Supreme Court held that the 1986 Act does not displace a divorced Muslim woman's right to claim maintenance under Section 125 of the CrPC, a remedy now continued in Section 144 of the BNSS.[16] The principle that the secular

[13] *Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556 (Constitution Bench, decided on 23 April 1985).
[14] The Muslim Women (Protection of Rights on Divorce) Act, 1986 (Act 25 of 1986), s. 3(1)(a).
[15] *Danial Latifi v. Union of India*, (2001) 7 SCC 740 (decided on 28 September 2001).
[16] *Mohd. Abdul Samad v. State of Telangana*, 2024 INSC 506 (decided on 10 July 2024).

remedy applies irrespective of religion therefore survives, but it now rests on this later line of authority as well as on *Shah Bano*.

### B. Badshah v. Urmila Badshah Godse

The man in this case already had a wife and children, a fact he concealed when he entered a later relationship. The woman lived with him as his wife until she discovered the earlier marriage and had to leave the matrimonial home. She then claimed maintenance. The question was whether she could do so even though the later marriage was void and she could not strictly claim the legal status of a wife. Taking a purposive approach to the meaning of "wife" and giving effect to the beneficial object of the provision, the Supreme Court allowed her claim.[17]

### C. Rohtash Singh v. Ramendri

The husband in this case obtained a decree of divorce from the Family Court, Meerut on 15 July 1995 on the ground of the wife's desertion, a decree she had contested. He then argued that, having deserted him, she was barred by Section 125(4) of the CrPC from claiming maintenance. The Supreme Court held that Explanation (b) to Section 125(1) makes a divorced woman who has not remarried a "wife", so that she may claim maintenance while she is unable to maintain herself. It further held that the bar in Section 125(4), including the bar on a wife living separately by mutual consent, presupposes a subsisting marriage and does not apply once the marriage has been dissolved.[18]

### D. Chanmuniya v. Virendra Kumar Singh Kushwaha

The Court indicated that the term "wife" should be given a broad and liberal construction, wide enough to take in a woman and a man who have lived together as spouses for a substantial period. To insist on conclusive proof of a legally valid marriage

[17] *Badshah v. Urmila Badshah Godse*, (2014) 1 SCC 188.
[18] *Rohtash Singh v. Ramendri*, (2000) 3 SCC 180 (decided on 2 March 2000).

in every such case would risk defeating the beneficial purpose of Section 125 of the CrPC.[19]

### E. Chaturbhuj v. Sita Bai

The Supreme Court clarified that a wife's earning an income does not, by itself, defeat her claim. What matters is whether her earnings are enough to maintain her, judged by whether she can live at a standard reasonably comparable to the one she enjoyed in her matrimonial home.[20]

## VI. CRITICAL ANALYSIS

### A. Patriarchy and the Origins of Beneficial Legislation

Patriarchal practice has long limited women's access to education, financial independence, social participation and legal authority. In parts of society the birth of a girl was regarded as a burden, which fed practices such as female infanticide and, later, sex-selective abortion, against which Parliament has had to legislate.[21] Protective and affirmative provisions have therefore at times been the legislature's response to entrenched disadvantage. The Protection of Women from Domestic Violence Act, 2005 and the Maternity Benefit Act, 1961, now subsumed in the Code on Social Security, 2020, belong to this tradition, and the maintenance remedy in criminal procedure can be read in the same light.[22]

### B. Gender Neutrality: The Case for Reform

For many women, the maintenance remedy has been an important safeguard. *Shah Bano*, as reaffirmed in *Danial Latifi* and *Mohd. Abdul Samad*, secured a divorced Muslim

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[19] *Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141.
[20] *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316.
[21] The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994).
[22] The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005); The Code on Social Security, 2020 (Act 36 of 2020), Chapter VI and s. 164 (repealing, among other enactments, the Maternity Benefit Act, 1961 with effect from 21 November 2025).

woman's access to support, and *Badshah v. Urmila Badshah Godse*, through a purposive reading, protected a woman who had entered a relationship in the belief that she was lawfully married. Changes in family structure, employment and earning patterns nonetheless raise a further question: should Section 144 be reworked to promote equality between spouses? One possible change would be to replace "his wife" in clause (a) of Section 144(1) with the gender-neutral term "spouse", so that either spouse could claim against the other irrespective of sex.

Women now work across a wide range of professions and have shown that they can achieve financial independence. That invites a rethink of the assumption that every wife must depend financially on her husband. It does not, however, show that all women enjoy equal economic opportunity, or that the need for protective maintenance has disappeared. In 2025 the labour force participation rate in usual status of women aged fifteen years and above was 40.0 per cent, against 79.1 per cent for men.[23]

### C. The Constitutional Framework: Articles 14, 15(1) and 15(3)

Article 14 guarantees equality before the law and the equal protection of the laws, and Article 15(1) forbids the State to discriminate against any citizen on grounds only of sex. Article 15(3), however, provides that nothing in Article 15 prevents the State from making any special provision for women and children, and Article 39(a) directs State policy towards securing that men and women equally have the right to an adequate means of livelihood.[24] The gender-specific design of Section 144(1)(a) must be tested against these provisions.

The Supreme Court has long rested the maintenance remedy on Article 15(3). In *Captain Ramesh Chander Kaushal v. Veena Kaushal*, Krishna Iyer J. described Section 125 as a measure of social justice, enacted to protect women and children, that falls within the

[23] Ministry of Statistics and Programme Implementation, Government of India, *Periodic Labour Force Survey: Annual Report 2025 (January–December 2025)* (National Statistics Office, 2026).
[24] The Constitution of India, arts. 14, 15(1), 15(3) and 39(a).

constitutional sweep of Article 15(3) and is reinforced by Article 39.[25] Article 15(3) had earlier been relied on in *Yusuf Abdul Aziz v. State of Bombay* to uphold the former offence of adultery, which exempted the wife from punishment, as a special provision for women.[26]

Later decisions have qualified that approach. In *Anuj Garg v. Hotel Association of India*, the Court struck down a statutory bar on the employment of women in premises where liquor was served, holding that a law presented as protective must be justified in principle and proportionate in measure, and must not rest on stereotyped assumptions about women.[27] In *Joseph Shine v. Union of India*, a Constitution Bench struck down Section 497 of the Indian Penal Code, 1860, held that Article 15(3) cannot be invoked to entrench paternalistic notions of protection, and overruled *Yusuf Abdul Aziz*.[28]

Section 144(1)(a) sits between these lines of authority. Unlike the adultery provision, it does not deny women agency; it responds to a measurable economic disadvantage, and the Supreme Court has consistently treated it as social-justice legislation. Its protective character is therefore more readily defended under Article 15(3). The difficulty is that the clause assumes, without inquiry, that a husband can never be the dependent spouse. A writ petition challenging Section 125 on this ground, as violative of Articles 14 and 15(1), was reported to have been filed in the Supreme Court in 2019;[29] its outcome could not be traced in the reported decisions. In April 2025 the Supreme Court dismissed a public interest petition that sought, among other reliefs, a declaration that the maintenance provisions of the CrPC and the BNSS be made gender-neutral, observing that such matters lie within the legislative domain.[30] The question is therefore one for Parliament.

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[25] *Captain Ramesh Chander Kaushal v. Veena Kaushal*, (1978) 4 SCC 70.
[26] *Yusuf Abdul Aziz v. State of Bombay*, AIR 1954 SC 321.
[27] *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.
[28] *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (decided on 27 September 2018).
[29] "'Gender Inequality': Plea in SC Challenges the Constitutional Validity of S. 125 CrPC", *LiveLaw*, 4 September 2019.
[30] *Janshruti (People's Voice) v. Union of India*, 2025 INSC 536 (decided on 15 April 2025).

### D. Misuse and Judicial Safeguards

A further concern in the debate is that maintenance proceedings may be started by claimants who have sufficient independent resources. This deserves careful assessment, and should not be treated as proof that claims are generally fabricated. In *Rajnesh v. Neha*, the Supreme Court laid down principles for deciding maintenance and the amount payable, and required both parties to file affidavits disclosing their assets and liabilities. The Court observed: "An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support.

It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it." These principles require courts to look at the parties' actual circumstances instead of resting on a single factor such as education or earning capacity.[31]

### E. Gender Neutrality in Existing Law

Section 25(1) of the Hindu Marriage Act, 1955 allows a court to award permanent alimony and maintenance to either spouse, and so offers an instance of a gender-neutral approach within Indian matrimonial law.[32]

In *Dr. (Mrs.) Vijaya Manohar Arbat v. Kashi Rao Rajaram Sawai*, the Supreme Court held that a daughter may be required to maintain her parents under Section 125(1)(d) of the CrPC. The Court reasoned: "parents having no son but only daughters and unable to maintain themselves, would go destitute, if the daughters even though they have sufficient means refuse to maintain their parents. After giving our best consideration to the question, we are of the view that section 125(1)(d) has imposed a liability on both the

[31] *Rajnesh v. Neha*, (2021) 2 SCC 324.
[32] The Hindu Marriage Act, 1955 (Act 25 of 1955), s. 25(1).

son and the daughter to maintain their father or mother who is unable to maintain himself or herself."[33]

The decision recognises that the duty to support parents does not rest on sons alone, which fits a wider movement towards equality in family rights and obligations. The amendment to Section 6 of the Hindu Succession Act, 1956, for instance, made daughters coparceners with rights equal to those of sons. This paper contends that equality of rights may equally invite a corresponding discussion about responsibilities within the family.[34]

### F. Judicial Liberality and Persisting Structural Inequality

Courts have generally read the maintenance remedy under Section 125 of the CrPC—and now Section 144 of the BNSS—in a way that advances its protective purpose. *Badshah v. Urmila Badshah Godse* extended maintenance to a woman whose purported marriage was void because the man had concealed an existing marriage, and *Rohtash Singh v. Ramendri* confirmed that a divorced woman may go on claiming maintenance until she remarries, subject to the statutory requirements.

That approach has to be read against the historical and continuing disadvantages women face. Dowry-related abuse, sati and discriminatory widowhood customs have all deepened women's vulnerability, as the need for specific legislation against dowry and sati shows,[35] and in many family's wives have depended on their husbands for financial support. The maintenance provision was meant, at least in part, to relieve the hardship that arises when a husband fails to support his wife or dependent children, or when parents are left without adequate means.

Gender-based disadvantage persists in other forms. In some community's sons are still preferred and girls' education given lower priority, and women may meet unequal pay

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[33] *Vijaya Manohar Arbat v. Kashi Rao Rajaram Sawai*, (1987) 2 SCC 278.
[34] The Hindu Succession Act, 1956 (Act 30 of 1956), s. 6, as substituted by the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005).
[35] The Dowry Prohibition Act, 1961 (Act 28 of 1961); The Commission of Sati (Prevention) Act, 1987 (Act 3 of 1988).

and barriers to employment, against which the Code on Wages, 2019, which replaced the Equal Remuneration Act, 1976, now prohibits discrimination on the ground of gender in wages and recruitment.[36] There is also the concern that some employer's regard maternity-related benefits as a cost and discriminate against women on that account. In *Air India v. Nargesh Meerza*, the Supreme Court considered service conditions affecting air hostesses, including provisions linked to pregnancy.[37]

Maternity leave can interrupt the continuity of a woman's career. The Code on Social Security, 2020 entitles a woman to maternity benefit for up to twenty-six weeks, of which not more than eight may precede the expected date of delivery, and for twelve weeks where she already has two or more surviving children.[38] Take a couple who work at comparable levels: if the wife takes maternity leave, her partner can continue working and advancing during that time, and on her return, she may find that opportunities for advancement have passed her by. She may also have to combine work with the care of a young child, and some women leave paid employment for longer periods to meet family responsibilities. Re-entering the workplace after such a break can make it hard to regain professional experience and keep pace with developments. These realities bear on whether formal equality alone is enough to remove the need for a protective maintenance provision.

Women's educational and professional opportunities have expanded, but not evenly across the country, and urban employment patterns cannot stand for the position of women in every region or social group. Indian society pairs shifting expectations about women's employment with the older assumption that women bear primary responsibility for domestic work. Even women who earn an income often carry a disproportionate share of domestic and caregiving work, and childcare is still too often treated as the mother's duty, while a father's involvement is described as help rather than

[36] The Code on Wages, 2019 (Act 29 of 2019), ss. 3 and 69.
[37] *Air India v. Nargesh Meerza*, (1981) 4 SCC 335.
[38] The Code on Social Security, 2020 (Act 36 of 2020), s. 60(3).

an equal parental responsibility. Workplace discrimination, unequal remuneration and expectations about household responsibilities can therefore persist alongside rising female workforce participation.

## VII. SUGGESTIONS AND RECOMMENDATIONS

Three options are open to the legislature. The first is to retain Section 144(1)(a) in its present form. This preserves a remedy that the Supreme Court has consistently treated as a measure of social justice, but it leaves without any summary remedy a husband who is genuinely incapable of supporting himself. The second is to replace "his wife" with "spouse". This secures formal equality, but it disregards the structural disadvantages identified in Part VII and risks exposing economically vulnerable women to counter-claims that would delay proceedings meant to be summary. The third is to retain the protection of the wife and add a narrow, needs-based provision under which a husband may claim maintenance only where he is unable to maintain himself because of disability or serious illness, and not merely because he is unwilling to work.

This paper favours the third option. It keeps the protective core of the provision within Article 15(3) while meeting the strongest equality objection, and its narrow trigger limits the scope for misuse. A clause on the following lines could be inserted after clause (a) of Section 144(1): "(aa) her husband, unable to maintain himself by reason of any physical or mental disability or serious illness; or", with an Explanation adopting the definition of a person with disability in the Rights of Persons with Disabilities Act, 2016.[39] Any such amendment should carry the following safeguards:

1. The claimant should bear the burden of proving the disability or illness by medical evidence, and of showing that his own income and assets are insufficient to maintain him;

[39] The Rights of Persons with Disabilities Act, 2016 (Act 49 of 2016), s. 2(s).

2. Both parties should file the affidavits of assets and liabilities prescribed in *Rajnesh v. Neha* before any interim order is made;
3. The disqualifications in sub-sections (4) and (5) of Section 144 should apply to such a claimant as they apply to a wife; and
4. The order should be open to alteration or cancellation under Section 146 on recovery or on a change in the means of either party.

Independently of the choice among these options, the legislature could clarify what "unable to maintain" means and set out the factors a Magistrate must weigh, including the parties' actual income, assets, needs, earning capacity and circumstances, rather than assume that a higher income or ownership of a residence automatically rules out maintenance. Judicial decisions have produced useful principles, but statutory guidance would improve consistency and reduce avoidable disputes.

## VIII. CONCLUSION

This paper set out to examine whether "his wife" in Section 144(1)(a) of the BNSS should give way to "spouse". It found that the duties owed to children and parents are already gender-neutral as to the person liable, and that the asymmetry is confined to the claim of a wife. The Supreme Court has read the remedy generously, extending it to divorced women, to women whose marriages were void and to women who earn but cannot maintain the standard of the matrimonial home, and has continued to ground it in Article 15(3).

A fully gender-neutral maintenance rule is difficult to defend until the structural disadvantages that still affect many women have been addressed. Women's workforce participation remains far below men's, and career interruptions and unpaid care continue to fall mainly on women. Were the statutory duty altered without adequate safeguards, economically vulnerable women could face greater hardship. At the same time, the anti-stereotyping principle in *Anuj Garg* and *Joseph Shine* cautions against a rule that assumes a husband can never be the dependent spouse.

The paper therefore favours retaining the protection of the wife, clarifying the statutory meaning of "unable to maintain", and adding a narrow provision for a husband who cannot maintain himself because of disability or serious illness, subject to the disclosure and disqualification safeguards set out in Part VIII. The protective purpose of beneficial legislation must stay at the centre of any such reform.

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5. The Code on Wages, 2019 (Act 29 of 2019).
6. The Commission of Sati (Prevention) Act, 1987 (Act 3 of 1988).
7. The Dowry Prohibition Act, 1961 (Act 28 of 1961).
8. The General Clauses Act, 1897 (Act 10 of 1897).
9. The Hindu Adoptions and Maintenance Act, 1956 (Act 78 of 1956).
10. The Hindu Marriage Act, 1955 (Act 25 of 1955).
11. The Hindu Succession Act, 1956 (Act 30 of 1956).
12. The Muslim Women (Protection of Rights on Divorce) Act, 1986 (Act 25 of 1986).
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