

# **INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]**

ISSN: 2584-1513 (Online)

Volume 3 | Issue 1 [2025] | Page 362 - 372

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# **AN ANALYTICAL STUDY ON THE ATTITUDES OF HIGHER JUDICIARY ON THE LAW OF MAINTENANCE OF WIFE IN INDIA WITH SPECIAL REFERENCE TO THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023**

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## **ABSTRACT**

Indian society has always been patriarchal, dominated by the males. In the dominant part of India usually male goes out to work to earn bread for his family. The woman used to take care of the household activities. In married institution, it is the husband who takes the responsibility to maintain his wife, children and parents. However, through the passage of time, this custom has changed. The women are also now coming forward and taking financial responsibility of their family. The educational and social reforms have played a crucial role in this regard. Now women are also playing a competitive role at par with male in all sectors like academic, entrepreneurship or otherwise. Notwithstanding this societal reform, the law related to maintenance of wife is standing on a different footing. The law casts a duty on the husband to give maintenance to his wife irrespective of the financial or educational status. The Supreme Court held that even if wife is not complying with the restitution of conjugal right order, she is still entitled to maintenance. The judiciary interprets law from the prospect of socio-political justice. This research paper has analysed the judicial attitudes of the higher judiciary on the maintenance of wife and has assessed it whether the decisions are in consensus with the statutory provisions or not.

Keywords: Maintenance, higher judiciary, judicial attitude and gender equality.

## **INTRODUCTION**

The sources of Indian law of maintenance ranges from Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956, the Bharatiya Nagarik Suraksha Sanhita, 2023 (earlier the Code of Criminal Procedure, 1973), the Protection of Women from Domestic Violence Act, 2005 and Special Marriage Act, 1954 including to the legal recourse available under the civil law. The

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scope of section 144 of the BNSS is wider than any statutory provision. The provision of BNSS applies to the wives, children and parents and is secular in nature. BNSS has replaced the erstwhile Code of Criminal Procedure (Cr.Pc). Earlier it was section 125 of the Cr.Pc and now it is section 144 of the BNSS. Only the numbering of the section has changed, the provision remains alike. The legislatures have successfully able to maintain balance between the maintenance provisions, the claimant and the husband. The legislatures have made provisions on interim maintenance and grounds on which the husband will be absolved from the obligation of giving maintenance. The State Governments of their respective States have been delegated with the power to amend the provision and fix their own monthly allowance. Like for example Madhya Pradesh, Maharashtra, Rajasthan, Uttar Pradesh and West Bengal have their own monthly allowance in relation to other States. Further the proviso of sub-section 3 of section 144 of the BNSS imparts right to the husbands to offer maintenance to the wives only on the ground that they agree to live with them. This explicit right includes an implicit right of the husband i.e., to deny maintenance to the wife if she refuses to live with him unreasonably. The court has discretion to consider the grounds of refusal irrespective of the offer and can pass order of maintenance. The role of judiciary is to interpret the law and to settle disputes between the parties. The conundrum between interpreting of law from the socio-political angle and the application of 'technicality of legal provisions' has been a long-debated topic. Laws laid down by the judiciary must be abided unless it is set aside by itself or the Apex.

## STATEMENT OF PROBLEM

The interpretation of the law of maintenance varies. We will find that in some cases the judiciary has rejected the interim maintenance on the ground that the wife is educated and earning same like her husband,<sup>3</sup> while in another case we find that the judiciary has allowed the interim maintenance one sided without giving opportunity to the husband to submit asset and liability affidavit.<sup>4</sup> Under sub-section 5 of section 144 of the BNSS the husband is not liable to give maintenance to his wife if it has been proved that the wife is living in adultery, or that without sufficient reason she is not living with her husband, or that both the husband and wife are living separately on mutual consent. Instituting of multiple maintenance petitions under several laws is popularly practiced in almost all lower courts, aside praying for an exorbitant amount of cost by

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<sup>3</sup> ABC v. XYZ, 2023 SCC OnLine Del 6529 (decided on 11-10-2023)

<sup>4</sup> X Vs. Y, CRL.M.C. 4406/2019 (Delhi High Court January 7, 2025).

the wife is practiced at large. The attitudes of judiciary are an imperative subject matter which should be studied and assessed to bring a uniformity.

## LITERATURE REVIEW

1. (The Special Marriage Act, 1954). Section 22 of the Special Marriage Act provides provisions related to restitution of conjugal rights. The right to restitution of conjugal rights can be invoked by both husband and wife.

2. (The Hindu Marriage Act, 1955). Section 9 of the Hindu Marriage Act provides provisions related to restitution of conjugal rights. This is a similar provision like we find in the Special Marriage Act. This section can also be invoked by both husband and wife.

3. (The Bharatiya Nagarik Suraksha Sanhita, 2023). Section 144 of the BNSS is also applicable for living partners. The Supreme Court in *Chanmuniya vs Virendra Kumar Singh Kushwaha & Another*<sup>5</sup> case, held that women of the live in relationship as wife are entitled for maintenance from their male counterpart.<sup>6</sup> Further sub section 3 Section 144 of the BNSS provide exceptions. The proviso of sub section 3 clearly left discretionary power to the Court to grant maintenance irrespective of the offer made by the husband to his wife to live together. This exception states that “if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing” Further sub section 4 of section 144 of the BNSS provides that “No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, from her husband under this section.....if without sufficient reason, she refuses to live with her husband....” Section 144 of the BNSS provides obligation on the male person who has sufficient means despite neglects or refuses to maintain his wife who is unable to maintain herself. The ‘unable’ of the wife to maintain herself is a matter of fact and interpretation of the judiciary. Nevertheless this ‘unable’ must be interpreted on the parameters of her educational qualification and the mala fide intention to institute the maintenance suit. Mala fide intention can be substantiated if it is shown that the wife has instituted multiple suits and has prayed for maintenance in all the suits irrespective of the non-bars of the statutes or lying in the asset and

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<sup>5</sup> (2011) 1 SCC 141

<sup>6</sup> *Shailesh Bopche Vs. Anita Bopche*, Misc. Criminal Case No. 30262 of 2023 (Madhya Pradesh High Court April 2, 2024).

liabilities affidavit or has stated misinformation in the petition without any base about the income of the husband.

4. (The Protection of Women from Domestic Violence Act, 2005). Section 20 and section 22 of the Protection of Women from Domestic Violence Act, 2005 speaks on monetary relief and compensation respectively. The provision under section 20 of the Act, is wider from the point of quantum of maintenance amount in respect to the BNSS. While the BNSS, the State Governments are empowered to fix its own maximum amount of allowance, the sub-section 2 of section 20 of the PWDV Act provides that the monetary relief shall be fair, reasonable and consistent for the wife to maintain her living standard which she is accustomed to. Section 22 of the PWDV Act provides that the wife is entitled for compensation for both physical and mental injuries. Further section 23 states for providing interim and ex-parte orders. The legislatures framed section 23 to provide interim relief to the aggrieved persons. This section fails to appraise the situations where the wife misuses the provision. Granting relief only based upon the prima facie disclosure of domestic violence in the petition is based on allegations. Allegations may be true or false. Interim order passed on mere allegations stands in an adverse position of the fundamental right of access to justice. This access to justice includes right to be heard and we are born with this right in a welfare State.

5. (Rajnish Vs. Neha & Anr., 2020). The wives tend to institute multiple maintenance litigations. There is no explicit provision to prevent them from instituting multiple maintenance cases under the PWDV Act and Cr.Pc. The judiciary also used to grant maintenance under both the statutes without balancing the income of the husband and maintenance already allowed under different maintenance provisions. The Rajnish vs. Neha is a landmark judgement which provide guidelines to this problem. As per the guidelines issued under this judgement, the applicant and the respondent need to submit an affidavit of assets and liabilities before deciding the quantum of maintenance by the court. The submission of affidavit is prerequisite conditions even in the case of claiming interim maintenance (Part-II of the Guideline). Further the guidelines states that the court has discretionary power to strike of the right of the respondent in submitting the asset and liability statement if it found the conduct is contumacious or has been employing delaying tactics. However, if we analyse this guideline, we find the right to submit affidavit is an imperative step of the respondent, but this is not in concurrence with the provision of section 23 of the PWDV Act because the role of judiciary in granting interim relief is basically based on the prima facie disclosure of domestic violence in the petition and not the assets and liabilities affidavit.<sup>7</sup>

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<sup>7</sup> X Vs. Y, CRL.M.C. 4406/2019 (Delhi High Court January 7, 2025).

6. (India, 1950). Article 15(3) of the Constitution provides that “Nothing in this article shall prevent the State from making any special provision for women and children.” The PWDV Act is a special provision whereby a wide category of women and children can claim judicial recourse.

7. (Liveland News Network, 2024). A PIL has been filed before the Supreme Court of India to implement the observations of the Supreme Court in Preeti Gupta Vs. State of Jharkhand and Achin Gupta Vs. State of Haryana. The suicide case of Atul Suhas has sparked the issue that men are harassed and abused too in matrimonial disputes. This case exhibits failure of the system and misuse of the women protection laws.<sup>8</sup>

8. (Devi, 2019). The researcher has studied the various maintenance legislations and the problem one face to enforce the orders. The researcher has also examined the socioeconomic aspect of the wives in maintenance claims. The research paper highlight ignorance of the women as the obstacle in enforcing their right. The procedural complexities also have been made its inclusion in the suggestion for enforcement. The divorcee wife is still considered a stigma in our society. The unwillingness to seek judicial recourse has also been a barrier to enforce the rights.

9. (Yadav & Victor, 2021). The researchers evaluated the various maintenance laws with the personal laws. It has been justified in their work on the right to maintenance from husbands who are having no source of income. This paper also searches for the possible recourses which one can avail whose husband is not working or has no sufficient means for maintenance.

## OBJECTIVE OF THE STUDY

- To study the attitude of the higher judiciary on the maintenance laws.
- To assess that whether the judicial attitude is based on application of judicial mind or is based on other aspect.

## HYPOTHESIS

The objective of section 144 of the BNSS (erstwhile Section 125 of the Cr.Pc) is to provide maintenance to women who are neglected by their husband. The role of the higher judiciary has been accommodative to the women in maintenance cases without application of judicial mind.

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<sup>8</sup> Pandey, G. (2024, December 23). A man's suicide leads to clamour around India's dowry law. New Delhi: BBC News.

## RESEARCH METHODOLOGY

To complete this paper both primary and secondary sources of data have been relied upon. The methodology has been employed is a two-stage process. Firstly, the laws related to maintenance have been analysed. Thereafter in the second stage a random survey has been conducted on the various case laws to determine the judicial attitude of the higher judiciary. This was based on the following steps:

1. Due to high number of cases, randomly ten sample of cases were selected from January 2024 to January 2025 which have been decided by the higher judiciary. Higher judiciary includes High Courts and the Supreme Court of India.
2. These cases were then categorized into two categories, affirmative and negative. Affirmative meant to be those cases where the judiciary passed order in favour of the wife and negative are those cases where the judiciary did not pass favourable order for the wife. Unfavourable includes those cases also where the judiciary has either disallowed the whole claim or reduced the quantum of maintenance.
3. Then the cases were analysed to see what was the determinant factors that have been used by the higher judiciary.

## DATA ANALYSIS

A sample of 20 number of cases have been randomly selected and its analysis is furnished herewith:  
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### **1. RINA KUMARI @ RINA DEVI @ REENA VERSUS DINESH KUMAR MAHTO @ DINESH KUMAR MAHATO AND ANOTHER:<sup>9</sup>**

i. Category: Affirmative.

ii. Analysis: In this case the Supreme Court held that even if wife is not living with her husband as per the Court's order for restitution of conjugal rights, she is entitled for maintenance. The court took the decision on the viewpoint of socio-political justice. The order of the Supreme Court is accommodative in nature to the extent that even the conduct of the wife falls under the exceptions of sub-section 4 of section 125 of the Cr.Pc it allowed the maintenance.

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<sup>9</sup> 2025 LiveLaw (SC) 47

## **2. MAHIM ALI VS THE STATE OF ASSAM AND ANR.:<sup>10</sup>**

i. Category: Affirmative.

ii. Analysis: The Gauhati High Court observed that a husband is duty bound to maintain his wife. Though this case does not fall within the exceptions of sub-section 4 of section 144 of the Cr.Pc. or sub-section 1 of section 144 of the Cr.Pc but the High Court held that unemployment is no excuse to absolve a husband from maintaining his wife.

## **3. SUKHENDRA CHATUVEDI V. NEHA & ANR.:<sup>11</sup>**

i. Category: Affirmative.

ii. Analysis: The Madhya Pradesh High Court held that leading an immoral life will not disentitle wife from maintenance allowance. The High Court mulled into the technicality aspects of the section 125 of the Cr.Pc. and held that the section only disentitles the wife who is living in adultery. A clear application of judicial mind has been seen in this case.

## **4. GAURAV MEHTA VS. ANAMIKA CHOPRA:<sup>12</sup>**

i. Category: Negative

ii. Analysis: The Allahabad High Court observed that the fact of the case falls in the exceptions. Sub-section 4 of the section 125 of the Cr.Pc. states that the wife cannot claim maintenance if she is residing separately by mutual consent. The wife who gets mutual divorce out of settlement that she will not raise any demand for maintenance loses her right to claim it post decree of dissolution of marriage. A clear application of judicial mind has been seen in this case.

## **5. RAM KUMAR RAVI VS STATE OF JHARKHAND & ANR.:<sup>13</sup>**

i. Category: Negative.

ii. Analysis: The Jharkhand High Court reduced the maintenance amount from Rs 5000/- to Rs 3000/-. The decision was taken based on fair determination of the earning in the event of absence of conclusive proof and affidavit of asset and liabilities. This case depicts a socio-political justice attitudinal aspect without too much mulling on the technicalities of a case.

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<sup>10</sup> 2024 LiveLaw (Gau) 35

<sup>11</sup> 2024 LiveLaw (MP) 80

<sup>12</sup> 2024 LiveLaw (AB) 218

<sup>13</sup> 2024 LiveLaw (Jha) 14



## **6. RANJEETA @ RAVITA VS. STATE OF U.P. AND ANOTHER:<sup>14</sup>**

i. Category: Negative.

ii. Analysis: The Allahabad High Court observed that the subordinate courts are empowered under sub-section 2 of section 125 of the Cr.Pc (now sub-section 3 of section 144 of the BNSS) to grant maintenance from the date of order. The High Court even noted that the husband has been taking care of his daughter. The conduct of the husband has been the determinant factor for the judiciary to decide whether to award maintenance from the date of order or from the date of instituting the maintenance suit. The Court however applied its judicial mind, but the presence of socio-political justice cannot be undermined in this case.

## **7. XXXX VS. YYYY:<sup>15</sup>**

i. Category: Affirmative.

ii. Analysis: The Punjab and Haryana High Court held that even a beggar is duty bound to maintain his wife. The jurisprudence on 'sufficient means' is yet to be developed. Right now, the stand of the judiciary is that no matter a person is beggar or unemployed, he is supposed to maintain his wife under any means. Situations like when a husband is affected with insanity or is in coma is a matter of curiosity and great interest to see how the higher judiciary reacts at that point of time.

## **8. SUNIL KUMAR V. SMT. BHAWNA & ORS.:<sup>16</sup>**

i. Category: Affirmative.

ii. Analysis: The Rajasthan High Court held that there must be sufficient proof that the wife is leading an adultery life. Further, the High Court noted that the conduct of the husband to allege adultery and filing of petition on restitution of conjugal rights at the same time is not convincing. Thus, it is noted that the conduct of the husband matters in maintenance cases. The court got into logical reasoning on the conduct of the husband in deciding this case which is also a form of application of judicial mind.

## **9. DWARKA PRASAD PATEL V. SMT. MARRI (SECOND APPEAL NO. 466/2007):<sup>17</sup>**

i. Category: Affirmative.

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<sup>14</sup> 2023 LiveLaw (AB) 149

<sup>15</sup> 2023 LiveLaw (PH) 50

<sup>16</sup> 2023 LiveLaw (Raj) 14

<sup>17</sup> 2023 LiveLaw (MP) 27

ii. Analysis: The Madhya Pradesh High Court held that a wife is entitled to get maintenance from every statutory provision unless it is explicitly prohibited. It has been observed that the court is burdened with similar litigation in respect to different Acts. It is settled law that judiciary can come up with guidelines in those areas where there is no law or provision available. But when the Parliament has specific right to women under different statutes, no court can override the provisions. This lack of specific prohibition results into multiple litigation for getting maintenance.

## **10. VINEETHA THOMAS V. SQD LDR DR PRAVEEN KUMAR**

**BORUSHETTY:**<sup>18</sup>

i. Category: Affirmative.

ii. Analysis: The Karnataka High Court held that increased cost of living and high rate of inflation is a ground for enhancement of the maintenance allowance. It referred the judgement of Supreme Court in Reema Salkan v. Sumer Singh Salkan and observed that the provision of section 125 Cr.Pc is to ameliorate the financial condition of the estranged wives. Section 127 of the Cr.Pc. (now section 146 of the BNSS) provides provision on alteration in allowance, sub-section 2 of section 37 of the Special Marriage Act, 1954 empowers the courts to enhance the maintenance allowance in case of change of circumstances. It applied the judicial mind as well as the aspects of socio-political justice.

## **FINDINGS**

Initially it was assumed that the role of the higher judiciary has been accommodative to the women in maintenance suits without applying of judicial mind. After the analysing the cases, it is found that higher judiciary has been deciding the maintenance cases on the socio-political aspect without too much mulling on the technicalities. The higher judiciary is accommodative to the wives to the extent that even if the husband as secured a decree on restitution of conjugal right against the wife, and the wife did not come back, it will not disentitle a wife from getting maintenance allowance. There is yet to have a consensus between the PWDV Act and the judgement of Rajesh Vs. Neha in granting interim relief to the wife. In Rajnesh Vs. Neha, it was provided that both parties need to submit affidavit of assets and liabilities to determine the amount of maintenance allowance while interim maintenance under the PWDV Act can be allowed upon prima facie disclosure of the occurrence of domestic violence and one-sided filing of the asset and liabilities statement.

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<sup>18</sup> 2022 LiveLaw (Kar) 508

## DISCUSSION

Socio-political justice is not alien to us. The High Courts and the Supreme Court of India are also known as the constitutional courts. They are responsible to see that the principles of constitution are not eclipsed under the cloud of loopholes which the defence lawyer employs. The socio-political justice system is an integral part of Judicial Activism, which itself a part of the basic structure of our constitution. But at the same time, we should not forget that socio-political school of thoughts leads to decisions without too much mulling on the technicalities of a case, which means that the 'rule of law' is overshadowed. The socio-political justice system is based on the notion that one person is weak, and another is stronger and the weaker is exploited by the stronger. This pre-conceived notion also leads to sympathetic approach by the courts. If the higher judiciary tends to extend justice on this ground, it will always lead to twisting of the decree or observation made by a subordinate court like what has happened in *Rina Kumari @ Rina Devi @ Reena v. Dinesh Kumar Mahto @ Dinesh Kumar Mahato and another*.<sup>19</sup> If we consider the observation of the Supreme Court that even if family court finds that the wife has left the husband unreasonably and ordered her to return to her husband, which the wife refused to, the same cannot be said to be a ground of exclusion the wife from maintenance allowance, it will demean the of the judiciary itself. The higher judiciary should understand that every party will push their respective grounds. The settled issues of the subordinate courts if not considered by the higher judiciary itself it will diminish the faith upon judiciary and boost the wives who thinks their husband as money tree.

## CONCLUSION

The law under section 144 of the BNSS states that it is the duty of the husband to maintain his wife. It also provides exception. But if the exceptions are not given due weightage, it will end the rule of law. A husband should not be made obliged to maintain his wife if she refused to live with him without sufficient cause or is well qualified so as earn livelihood. The misuse of maintenance cases is a big concern. The marriage institution is under stake and is on the way of disappearing if the husbands. After the occurrence of suicidal cases by the husbands in matrimony disputes, we need to re-visit the maintenance law to see that no mala fide maintenance cases are allowed maintenance. Section 144 of the BNSS should not be used as a means of squeezing money from

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<sup>19</sup> Criminal Appeal No. .... of 2025 (@ Special Leave Petition (Crl.) No. 5896 of 2024)

husband but rather to help the neglected wife. The law and the attitude of the higher judiciary should be more particular on the wives who are well qualified and uses husband as a money machine. The interim maintenance allowance should not be allowed based on one-sided hearing. The higher judiciary should give importance to the Doctrine of Natural Justice at every phase. The divorce laws also to be re-visited and should be made a fundamental right for a husband whose wife is not willing to reside together.