

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



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# **MAINTENANCE OF WIFE: WHETHER SEC 125 NEEDS TO BE GENDER NEUTRAL**

AUTHORED BY - KANCHAN JAIN  
CT University

CO-AUTHOR - DR CHEENA ABROL  
Assistant Professor, Ct University

## **Abstract**

This study presents the necessity for gender neutrality in Section 125 of the Criminal Procedure Code, which presently grants maintenance rights mostly to women. Although the provision acts as a critical safeguard for economically vulnerable persons, it reflects a gender-specific framework based on historical and cultural contexts. This paper undertakes an in-depth exploration of whether Section 125 needs reformulation by bringing gender-neutral provisions under the constitutional lights of equality, towards an evolving socio-economic dynamics in Indian society. In-depth analysis is undertaken in terms of legislative gaps, challenges in implementation, and views both for and against gender neutrality, along with critically scrutinizing global practices, socio-cultural connotations of such reforms, and their effectiveness in presenting solutions equally applicable to contemporary issues. It finally refers to recommendations of a balanced approach which should ensure gender equality without sacrificing the protections for vulnerable individuals. Therefore, combining legal reform with societal awareness is supposed to represent effective and inclusive outcomes from this research.

**Keywords:** *Gender neutrality, Section 125 CrPC, Maintenance laws, Socio-economic equity, Legal reform*

## **1. INTRODUCTION**

This concept of maintenance has been a part and parcel of matrimonial law so that a dependent spouse can have financial support for survival as well as dignity. In India, Section 125 of the Criminal Procedure Code (CrPC) acts as a key legal provision in the arena of maintenance. It provides an effective access to relief for someone who is unable to sustain himself or herself. As enacted as a secular law, it would render the right of maintenance independent of religious

domination. The enacted provision would thus again underline its significance in helping to overcome economic vulnerabilities that rise during the course of marriage and familial relationships. The provision as it stands is very heavily gendered since it speaks predominantly to the right of the wife to claim maintenance from her husband. This approach, rooted in historical and social contexts, has become an issue of debate in the evolving discourse on gender equality.<sup>1</sup>

Historically, the socio-legal jurisprudence of India has always recognized the economic dependence of women on their male counterparts, mainly in marriage. This is precisely what has been reflected in Section 125 CrPC, which mandates that a husband provide maintenance to his wife if she lacks sufficient means to support herself. This provision has thus played an important role in protecting the rights of deserted, divorced or destitute women, enabling them to live and maintain their dignity while not being economically independent. However, with changes in societal lifestyle, women are increasingly becoming economically independent. Thus, the example where the husbands may need monetary support from their wives is no longer rare. Hence, the crucial question that arises in this scenario is whether Section 125 must become gender-neutral and reflect the equality that has been embedded in the Indian Constitution<sup>2</sup>

A gender-neutral provision would also recognize that spouses owe equal reciprocal duties to each other. This again is reflected in the general constitutional requirement of equality under Article 14, which forbids discrimination on grounds of sex and so encourages eliminating prejudice based on sex. In a properly modern provision, consideration should also be given to the realities of modern relationships-in which economic roles are becoming increasingly fluid-and where women are increasingly or even solely the breadwinner for the family. Critics argue that this perpetuates an old-fashioned stereotypical representation of gender roles, which goes against the progressive vision of equality.

On the other hand, opponents of a gender-neutral approach argue that maintenance laws are aimed at redressing structural inequalities that are skewed against women. They point out that economic distribution among genders remains skewed even though education and employment opportunities have improved. In most instances, women sacrifice their careers for domestic roles, putting them at a disadvantage in case of marital break-up. Arguably, a neuter law could

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<sup>1</sup> "Maintenance Under Section 125 Cr.P.c.," *available at*: <https://www.legalserviceindia.com/legal/article-4889-maintenance-under-section-125-cr-p-c.html> (last visited November 17, 2024).

<sup>2</sup> "MAINTENANCE OF WIFE: WHETHER SECTION 125 CRPC NEEDS TO BE GENDER NEUTRAL - Sahil Afnan S.," *ijalr*, 2023 *available at*: <https://ijalr.in/volume-4-issue-2/maintenance-of-wife-whether-section-125-crpc-needs-to-be-gender-neutral-sahil-afnan-s/> (last visited November 17, 2024).

weaken the very protective intent of Section 125 and could be misused against women who constitute the more vulnerable party in most cases.<sup>3</sup>

The debate over the gender-neutrality of Section 125 CrPC is not only a legal debate but also reflects broader changes and challenges in the society. It calls for a delicate balance between achieving gender equality and the need to protect the framework that deals with systemic inequalities. That such a discourse raises pertinent questions regarding the interface between law, gender, and societal expectations creates the possibility for law reform that will make maintenance laws not only egalitarian but also pertinent to the understanding of contemporary realities. The progress of India toward the goal of a more equitable society underscores the importance of generally adjusting legal frameworks to the dynamics of gender and relationships as these are transforming.<sup>4</sup>

### ***1.1. Objectives of the Study***

1. To Analyze the Gendered Framework of Section 125 CrPC.
2. To Evaluate the Need for Gender Neutrality in Maintenance Laws.
3. To Suggest Reforms for a Balanced Approach.

### ***1.2. Research Methodology***

This study used a doctrinal research methodology. Doctrinal research involves a rather detailed analysis of existing provisions of law, precedents of the judiciary, and other statutory interpretations. In this study, the researcher probes Section 125 of the Criminal Procedure Code (CrPC) based on both primary and secondary sources. The basis of examination will include statutes, case laws, scholarly articles, and legal commentaries.

The doctrinal approach would be particularly apt for the study because it aims to derive an understanding of the gendered framework of Section 125, its historical context and its implications in modern society. Through the evaluation of the landmark judgments as well as constitutional principles of equality and justice, the study would assess whether the provision requires to be made gender-neutral. In addition, the research would incorporate comparative analysis of maintenance laws prevailing in other jurisdictions to identify any best practices. This method would ensure an appropriately structured and thorough exploration of legal and societal conditions for the issue.

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<sup>3</sup> Ibid.

<sup>4</sup> Aditya Anand, "Gender Neutrality: Rights of one, abrogation of another? - Academike" Laxmikant Bhumkar, 2019 *available at*: <https://www.lawctopus.com/academike/gender-neutrality-rights-of-one-abrogation-of-another/> (last visited November 17, 2024).

## 2. RELATED WORK

1. Singhal, I. (2023). [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/injlolw11&section=575](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/injlolw11&section=575)<sup>5</sup>

This paper probes the maintenance laws of India gender-focused. The article analyzes Agarwal's critique of the historically ground and socio-legal underpinnings of Section 125 of the CrPC highlighting protection of women as well as children by the law. This article touches on the reasons that make the laws gendered in a rather patriarchal societal structure. The author has also discussed the relevance of these laws for women's financial independence, questioning whether they promote dependency rather than empowerment. The paper ends with recommendations to correct gender biases while retaining crucial protections.

1. Basu, S. (2024). <https://books.google.com/books?hl=en&lr=&id=WWAQEQAAQBAJ&oi=fnd&pg=PA41&dq=Protection+in+Maintenance+Laws+india&ots=b7EK7xJYmE&sig=Rp9KoO-pUENXLFbgTTW0RmEfM9w><sup>6</sup>

The author works on the tension created between ensuring equality and maintaining protective measures for economically weak individuals. It examines, in the article, the implications of adopting the policy of gender neutrality toward maintenance laws, with constitutional provisions and socio-economic realities on one side of the balance. Here, the author argues for a more nuanced approach, balancing equity with equality and addressing the unique challenges woman faces while allowing room for male claimants in appropriate circumstances.

2. Baloni, A., & Ahmad, K. (2023). <https://www.inderscienceonline.com/doi/abs/10.1504/IJHRCS.2023.133754><sup>7</sup>

This article focuses on the societal and legal impacts of maintenance laws in India on women. Author criticizes patriarchal assumptions on which Section 125 CrPC is based and how they seem to feed the stereotype of women's economic dependence. Author finally identifies some systemic barriers preventing equal access to justice, especially

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<sup>5</sup> Singhal, I. (2023). Spousal Maintenance in India: An Analysis. *Issue 2 Indian JL & Legal Rsch.*, 5, 1. [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/injlolw11&section=575](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/injlolw11&section=575)

<sup>6</sup> Basu, S. (2024). Cutting to Size Property and Gendered Identity in the Indian Higher Courts. *Gender in the Making: Indian Contexts. Special Issue*, 41. <https://books.google.com/books?hl=en&lr=&id=WWAQEQAAQBAJ&oi=fnd&pg=PA41&dq=Protection+in+Maintenance+Laws+india&ots=b7EK7xJYmE&sig=Rp9KoO-pUENXLFbgTTW0RmEfM9w>

<sup>7</sup> Baloni, A., & Ahmad, K. (2023). A 21st century quest for gender neutral maintenance in the Indian legal system. *International Journal of Human Rights and Constitutional Studies*, 10(4), 323-335. <https://www.inderscienceonline.com/doi/abs/10.1504/IJHRCS.2023.133754>

social stigma and limited legal awareness. The paper recommends reforms that add more inclusiveness and fairness together with specific focus to restrain gender vulnerabilities.

4. Verma, S., & Anand, A. (2021). [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/juscrp2&section=630](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/juscrp2&section=630)<sup>8</sup>

Author's article builds a case for making Section 125 CrPC gender-neutral. The author critiques the current law for its gendered focus, arguing that it does not account for situations where men or other genders may require maintenance. Author examines international practices and constitutional principles of equality to support his argument, proposing a phased transition to gender-neutral provisions that preserve equity.

5. Nayak, S. (2023). [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/injlolw10&section=203](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/injlolw10&section=203)<sup>9</sup>

The author's article deals with the adaptation of maintenance laws to live-in relationships. The author enumerates the lacunas of Section 125 in identifying and addressing non-traditional partnerships and argues for an expansive definition of "wife" encompassing cohabiting partners. The author presents analyses regarding the legal and social obstacles that were posed against such inclusivity and introduces suggestions for a more inclusive legal framework.

6. Ralte, H., & DOUNGEL, J. (2022). [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/injlolw5&section=25](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/injlolw5&section=25)<sup>10</sup>

The author critically analyzes the very Section 125 CrPC. It discusses its strengths and weakness. Khan believes that the current scenario requires change concerning certain social and economic realities, such as the increase in the number of gender-neutral roles and live-in relationships. The article focuses on achieving equilibrium between traditional protection and changing conceptions of equality. The piece seeks legislative and social measures aimed at updating laws regarding maintenance.

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<sup>8</sup> Verma, S., & Anand, A. (2021). Gender-Neutral Laws-Is India Ready?. *Jus Corpus LJ*, 2, 718. [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/juscrp2&section=630](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/juscrp2&section=630)

<sup>9</sup> Nayak, S. (2023). From Taboo to Rights: Availability of Maintenance to Women in Live-in Relationships in India. *Issue 1 Indian JL & Legal Rsch.*, 5, 1. [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/injlolw10&section=203](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/injlolw10&section=203)

<sup>10</sup> Ralte, H., & DOUNGEL, J. (2022). Administration of Gender Justice through Section 125 of the CRPC, 1973. *Issue 2 Indian JL & Legal Rsch.*, 4, 1. [https://heinonline.org/hol-cgi-bin/get\\_pdf.cgi?handle=hein.journals/injlolw5&section=25](https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/injlolw5&section=25)

### 3. OVERVIEW OF SECTION 125 CRPC

Section 125 of the Criminal Procedure Code is a statutory provision intended towards vagrancy and destitution by providing legal machinery for financially dependent persons to seek maintenance. It therefore acts as a secular remedy in as much as it does not pertain to the religion of any person but deals with the issue of who cannot maintain themselves. While civil laws like the Hindu Adoption and Maintenance Act of 1956 and the Muslim Women (Protection of Rights on Divorce) Act of 1986 govern maintenance in specific religious frameworks, Section 125 transcends such boundaries and guarantees uniform remedies.

The section involves financial provisions in cases involving wives, children, and parents in order to take care of economic vulnerabilities in relationships. In the administration of this section, it does not require strict proof of a formal marital relationship because the law purports to favor the principle of equity over procedural technicalities.

#### 3.1 Key Provisions and Scope

The key provisions of Section 125 CrPC are outlined in subsections (1) to (4), which detail the eligibility, obligations, and enforcement mechanisms:

- **Eligibility** Section 125(1) confers rights on specific classes of persons - wives, legitimate or illegitimate minor children, and parents. The applicant must not have wherewithal to support himself/herself.
- **Obligation of Maintenance:** The provision imposes an obligation on specific relatives, such as the husband, parents, or children, to provide financial assistance to the claimant.
- **Quantum of Maintenance:** There is no fixed amount; however, the quantum of maintenance awarded is decided keeping in mind the financial status of parties and the reasonable needs of the claimant.
- **Enforcement:** Section 125(3) permits a Magistrate to enforce the maintenance orders. It may award both fine and imprisonment for contravention.

The scope of Section 125 is deliberately broad, emphasizing a welfare-oriented approach. It ensures that maintenance claims can be adjudicated expeditiously without being contingent upon the outcome of complex matrimonial disputes.<sup>11</sup>

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<sup>11</sup> Ayush Menon, "Maintenance Under Section 125 of the Criminal Procedure Code" *Libertatem Magazine*, 2021 available at: <https://libertatem.in/blog/maintenance-under-section-125-of-the-criminal-procedure-code/> (last visited November 19, 2024).

### 3.2 Definition of "Wife" under Section 125

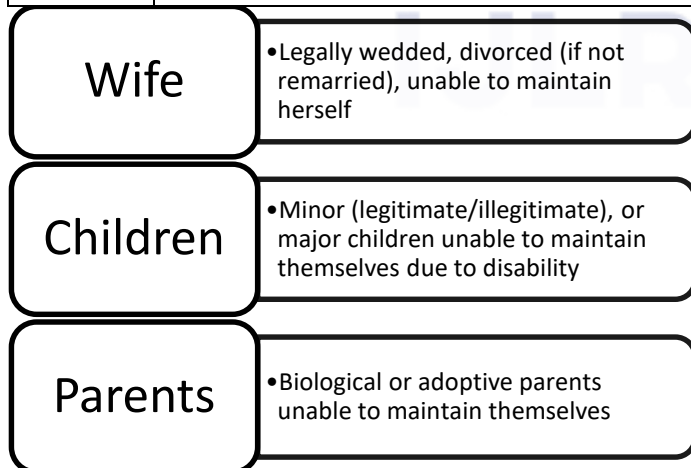
The wife under Section 125 was defined to include legal wedded wives, whether living with, or separated from, the husband. Section 125(1)(a) held that a wife could claim maintenance if she was unable to maintain herself herself. Crucially, the section covered the interest of the divorced wives not remarried - whose dependence had not diminished and whose husband's obligation did not come to an end even after divorce.<sup>12</sup> However, on the other hand, such relationships do not constitute a legal marriage and, thus, are excluded from the definition. Nonetheless, in certain personal laws, when the relationship resembles marriage, this exception is applicable. The section's language has been criticized and sparked debates concerning husbands or male partners who might be in similar situations.

### 3.3 Beneficiaries and Limitations

#### Beneficiaries:

Section 125 identifies three categories of beneficiaries:

Category	Eligibility	Obligation
Wife	Legally wedded, divorced (if not remarried), unable to maintain herself	Husband
Children	Minor (legitimate/illegitimate), or major children unable to maintain themselves due to disability	Parents (both mother and father)
Parents	Biological or adoptive parents unable to maintain themselves	Adult children (male or female, if financially capable)



(Figure 1: Three categories of beneficiaries)

<sup>12</sup> Prachi Bhardwaj, "Maintenance of wif" SCC Times, 2020 available at: <https://www.sconline.com/blog/post/2020/11/05/maintenance-of-wifehusband-doesnt-have-to-pay-maintenance-in-each-of-the-proceedings-under-different-maintenance-laws-explainer-on-supreme-court-guidelines/> (last visited November 19, 2024).

**Limitations:**

- 1. Means of the Respondent:** The liability will depend on the means of the respondent for maintenance.
- 2. Disentitlement:** A wife is not liable to be granted maintenance if she is living in adultery, or if she refuses to live with her husband without proper cause, or has mutually agreed to live separately under a valid agreement-Section 125(4).
- 3. Provable Dependence:** Evidence of dependence is required by claimants, which sometimes causes procedural delay.

Section 125 CrPC provides a vital legal remedy, yet its gendered language and limitations highlight the need for reforms to align it with contemporary societal norms and constitutional principles.

#### 4. GENDER NEUTRALITY IN MAINTENANCE LAWS

The principle of maintenance is based upon the duty to maintain those unable to provide for themselves financially. The traditional notion, however, has been traditionally anchored within gendered frameworks whereas modern dynamics within societal and constitutional jurisprudence have led to shifts focusing on the need for gender-neutral maintenance laws. Most jurisdictions around the world have adopted gender-neutral maintenance by stressing the mutual duties of spouses. In India, however, Section 125 of the Criminal Procedure Code (CrPC) is quintessentially gendered: it favours women as beneficiaries. This section examines global practices, Indian societal viewpoints and arguments on gender neutrality in maintenance laws.<sup>13</sup>

##### 4.1 Comparative Analysis with Gender-Neutral Maintenance Laws Globally

Maintenance laws worldwide have gone through tremendous changes to embrace new realities of societal role and economic issues. In most jurisdictions, gender-neutral maintenance frameworks exist, where there is a law saying financial obligations between parties are determined by the economic status of both parties rather than genders.<sup>14</sup>

Country	Law	Gender-Neutral Provisions
United	Uniform Marriage	Both spouses are obligated to provide spousal support

<sup>13</sup> Mondal, Joysri and Ganguli, Prithwish (2024) *Reforms in Maintenance Laws: Addressing Gender Bias*. available at SSRN: <https://ssrn.com/abstract=5026414> or <http://dx.doi.org/10.2139/ssrn.5026414>

<sup>14</sup> Dr. MANJIRI MOHAN JAWDEKAR, "Maintenance Laws And Gender Equity: An Empirical Study Of Implementation And Its Impact On Society," 20 *Elementary Education Online* 5475–83 (2021).

States	and Divorce Act	based on financial need and earning capacity.
United Kingdom	Matrimonial Causes Act, 1973	Maintenance can be awarded to either spouse, depending on financial circumstances and contributions to the marriage.
Australia	Family Law Act, 1975	Gender-neutral approach where either spouse may claim spousal maintenance if unable to support themselves adequately.
Canada	Divorce Act	Spousal support is based on need, financial disparity, and contributions during the marriage, without gender bias.

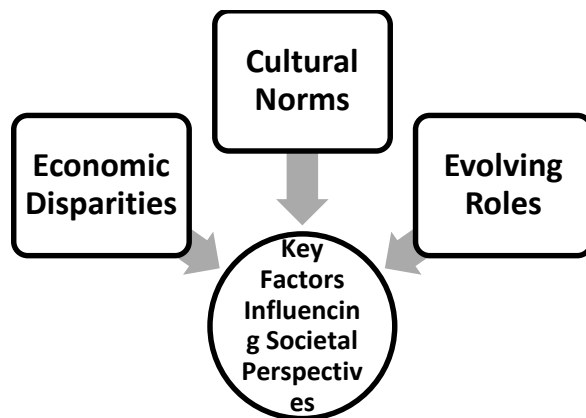
These laws center on mutual support and equality, distancing them from the stereotypical norms of the male bread winner and the dependent wife. As economic roles are fluid, such laws just enforce the matter of equity, which India may adopt in reforming its maintenance provisions.

#### 4.2 Perspectives from Indian Jurisprudence and Society

Indian maintenance laws reflect the socio-cultural reality of the time when they were enacted. Section 125 CrPC was designed to protect economically dependent women who have always been envisaged as more vulnerable in a marital relationship. However, the roles played by women in the society have undergone significant changes with women now increasingly contributing towards household incomes through work.<sup>15</sup> Nevertheless, Indian maintenance laws are still characterized by gendered assumptions. Section 125 requires husbands to provide maintenance while ignoring a situation where women may be more substantial breadwinners or men financially vulnerable. Such a gendered framework is also an apparatus through which stereotypes are perpetuated, largely portraying men as providers and women as dependents, even though reality can vary widely from this model. The societal perception of gender-neutral maintenance laws is thus mixed. While gender-neutrality unfolds under the constitutional principles of equality under Articles 14 and 15 of the Indian Constitution, traditional notions of patriarchy and socio-economic disparities remain the influence over public opinion. Critics argue that while gender neutrality is ideal, it must be done judiciously so as not to fall into the trap of being misused and instead would dilute the protection offered to vulnerable individuals,

<sup>15</sup> Menski Werner, “12 Maintenance Law” OUP Academic, 2009 *available at:* <https://academic.oup.com/book/9238/chapter/155942558> (last visited November 20, 2024).

especially women.<sup>16</sup>



(Figure 2: Key Factors Influencing Societal Perspectives)

### 4.3 Arguments in Favor of Gender Neutrality

The call for gender neutrality in maintenance laws stems from a recognition of changing societal and economic dynamics, as well as the constitutional commitment to equality. Some of the key arguments in favor of gender-neutral maintenance laws include:

- 1. Protection of Constitutional Values** Gender-neutral maintenance laws would uphold the principles of equality and non-discrimination enshrined in Articles 14 and 15 of the Constitution. Such laws would reflect the constitutional vision of a society free from gender bias by treating both spouses equally.
- 2. Exaltation of Mutual Responsibilities** Marriages are mutual rights and obligations relationships. A gender-neutral approach recognizes that either party to a marriage may be economically dependent on the other, considering the circumstances. This framework focuses on equity instead of traditional dependency .
- 3. Respect for Economic Reality** Roles of men and women in economic activities have radically transformed. Women can be the main breadwinners, while men can assume care-giving roles. Gender-neutral maintenance laws respond to the new realities, making maintenance equitable.
- 4. Eradicating Stereotypes of Gender Maintenance** A gendered approach to maintenance often contradicts the stereotype that a man must be a provider and a

<sup>16</sup> Vartika Pandey and Dr Shashank Shekhar “Gender Neutrality Of Indian Laws - A Myth Or Reality?” *UK Zhende Publishing Limited Company* (2024) available at: [https://www.researchgate.net/publication/380502216\\_Gender\\_Neutrality\\_Of\\_Indian\\_Laws\\_-\\_A\\_Myth\\_Or\\_Reality](https://www.researchgate.net/publication/380502216_Gender_Neutrality_Of_Indian_Laws_-_A_Myth_Or_Reality) (last visited November 20, 2024).

woman a dependent. Gender neutrality dismantles these stereotypes, making a marital relationship more egalitarian.

5. **International Best Practice** Most countries in the world have adopted gender-neutral maintenance laws, which works out to be quite effective and just. India can learn from these models and build a law that is balanced and fair.
6. **Protection of Energetic Male** Though women in marital disputes were not so energetic, men also suffer financial setback in their marital disputes. The issues can be due to unemployment or health problems. Gender-neutral laws will protect all alike who deserve protection.<sup>17</sup>

Making Section 125 CrPC gender-neutral is one progressive step in the direction of finally achieving true equality in maintenance laws. The enactment of such reforms will have to be accompanied with adequate safeguards that can thwart misuse and ensure that the protection given to vulnerable persons is not diluted by its misuse. A balanced approach, born out of international precedents and taking upon itself the socio-economic realities of India, will alone be able to usher in a fair and effective maintenance framework.

## 5. CHALLENGES OF MAKING SECTION 125 GENDER NEUTRAL

The transition from a gender-specific to a gender-neutral framework in the law of maintenance under Section 125 of the Criminal Procedure Code (CrPC) throws up its own set of challenges. These come from deep-rooted societal norms, practical problems in the enforcement mechanism, and even fears of possible misuse. All these need scrutiny and an appropriate approach towards reforms for a just and effective system.

### 5.1 Social and Cultural Context in India

Indian society holds traditional gender and patriarchal roles that characterize what the view of family responsibility is.

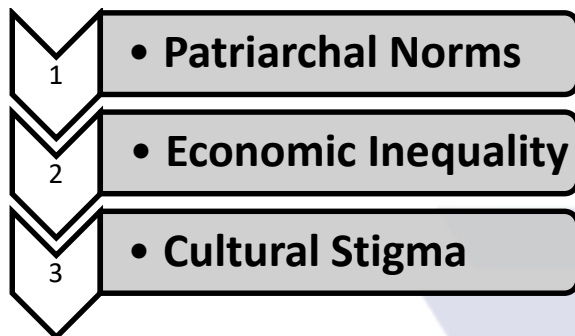
**Patriarchal Structures:** Patriarchal structures come in the form of social expectations still perpetuated across the country, where men are seen to be providers and women are seen to be dependents. Such social expectation therefore limits acceptance of a system whereby men will seek maintenance from women, even if they are economically disadvantaged.

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<sup>17</sup> "Indian Constitutional Framework; Articles 14, 15 and 16 of the Indian Constitution and women's rights – Rights of Women and Children," *available at:* <https://ebooks.inflibnet.ac.in/hrdp05/chapter/indian-constitutional-framework-articles-14-15-and-16-of-the-indian-constitution-and-womens-rights/> (last visited November 20, 2024).

**Economic Inequality:** Despite advancement, women of the country are still economically disadvantaged in the following ways: less wages and less access to the whole resources. A neutral law regarding gender may unwittingly increase women's economic burden as most of them suffer from economic vulnerabilities.

**Cultural Resistance:** The concept of man turning up to wife for alimony defies the social norms and thereby suffers stigma and ridicule. In sharp contrast, women being ordered to pay maintenance are subjected to social ostracism for going against the conventional roles.<sup>18</sup>



(Figure 3: Aspects of Cultural Challenges)

## 5.2 Practical Implications in Implementation

The steps in transitioning to a gender-neutral framework for maintenance raise some very practical problems of enforcement and procedural complexity.

**Assessing Financial Needs:** Court proceedings now insist that the financial ability of both spouses must be examined objectively, which calls for unbiased scrutiny of incomes, expenses, and contributions. The same might make legal decision-making and eventual judgments time-consuming and cumbersome.

**Judicial backlog:** Indian courts already witness heavy pendency. A gender-neutral provision is likely to increase the volume of the claims for maintenance, further burdening the judiciary and delaying justice for the genuine claimants.

**Training and Awareness:** Section 125 must be amended to include non-gender-specific provisions. The judiciary, lawyers, and enforcement officials would need extensive training to apply the law without bias. Failure to do so might also compromise the entire reform at the behest of deep-seated gender biases.

**Non-Monetary Contributions:** Determining the value of non-monetary contributions, such as caregiving and household responsibilities, poses a significant challenge. A gender-neutral

<sup>18</sup> Jenny C Tonsing and Karen N Tonsing, "Understanding the role of patriarchal ideology in intimate partner violence among South Asian women in Hong Kong," 62 *International Social Work* 161–71 (2017).

framework must account for these roles to avoid financial inequity.<sup>19</sup>

**Key Practical Challenges:**

Challenge	Explanation
Determining Financial Needs	Requires comprehensive analysis of both parties' financial status.
Increasing Case Volume	More cases due to expanded eligibility, leading to delays in adjudication.
Training and Capacity Building	Legal professionals need training to apply gender-neutral laws fairly.
Recognizing Non-Monetary Roles	Non-earning contributions like caregiving need proper valuation in maintenance claims.

**5.3 Possible Misuse and Safeguards**

Such legislation that introduces gender-neutral maintenance laws adds to the worries about misuse, as courts across the nation have been criticized for frivolous litigation in family disputes.

**Risk of Vexatious Claims:** Extension of maintenance eligibility may throw open the floodgates to more frivolous claims by litigants seeking some kind of financial advantage. This problem is specially pertinent in adversarial disputes where a Maintenance claim is raised as a weapon of harassment.

**Financial Misrepresentation** Parties may misrepresent their financial situation or conceal assets to obtain specific outcomes in maintenance determinations. That would complicate the adjudication process further and relativize the integrity of the law.

**Risk of diluting current protections for economically dependent women:** Gender-neutrality risks diluting the protections currently afforded to economically dependent women, who are vulnerable in many instances. A balance must be struck to ensure these individuals continue to receive adequate support.

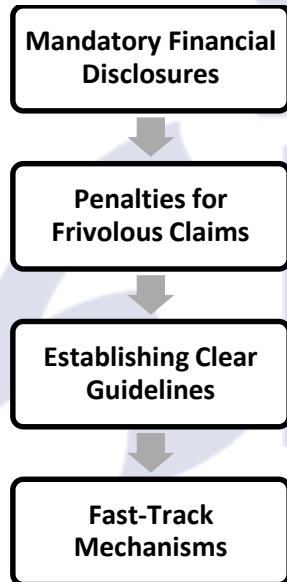
**Judicial Overload:** Without safeguards, the courts may become overwhelmed with disputes over maintenance claims, further delaying the resolution of genuine cases.<sup>20</sup>

<sup>19</sup> www.ETLegalWorld.com, "Maintenance provision in Hindu Marriage Act gender-neutral: Delhi HC" IANS, 22 November 2023. <https://legal.economicstimes.indiatimes.com/news/litigation/maintenance-provision-in-hindu-marriage-act-gender-neutral-delhi-hc/105424595> (last visited November 20, 2024).

<sup>20</sup> Sanjoy Ghose, "A Gender-Neutral Domestic Violence Law Harms Rather Than Protects Women" The Wire, 3 November 2016. <https://m.thewire.in/article/law/a-gender-neutral-domestic-violence-law-harms-rather-than-protects-women?utm=authorpage> (last visited November 21, 2024).

**Proposed Safeguards:**

Safeguard	Implementation
Mandatory Financial Disclosures	Both parties must provide detailed and verified financial statements under oath.
Penalties for Frivolous Claims	Introduce penalties for false claims to deter misuse of gender-neutral laws.
Establishing Clear Guidelines	Courts should follow structured criteria for assessing financial and non-monetary contributions.
Fast-Track Mechanisms	Dedicated family courts or fast-track procedures to handle maintenance claims efficiently.



**(Figure 4: Proposed Safeguards)**

**Public Awareness:** Societal acceptance of gender-neutral laws would require massive awareness programs. Public education regarding the need for equality in financial burdens is more likely to lessen resistance and stigma while creating a more inclusive perspective regarding family responsibilities.

Making Section 125 CrPC gender-neutral is the need of the hour to maintain parity and justice at the legal level. But the challenges attached, from cultural resistance to actual implementation hassle, demonstrate how difficult it would be to introduce such a reform. The challenges must be handled by interrelating constitutional pillars with India's socio-economic realities.

By enforcing strong safety measures, providing judicial education, and building public support, the transition to gender-neutral maintenance laws may be conducted in a fair manner for all. A

carefully developed and phased reform process is needed to further modernize the legal framework of India while protecting the rights of vulnerable individuals.

## 6. PERSPECTIVES AGAINST GENDER NEUTRALITY

While the notion of gender neutrality in Section 125 CrPC finds support in constitutional principles of equality, it is ironically opposed through valid apprehensions that its operation may not be beneficial in situations involving weak women or concerning the socio-economic realities of India. The critics argue that the gender-neutral framework may dilute protections specifically designed for women, who are often the economically weaker party in matrimonial relationships. This chapter discusses the argument against gender neutrality with particular emphasis on protection of women, parity, and balance between equity and special protection.<sup>21</sup>

### 6.1 Protection of Vulnerable Women in Matrimonial Relationships

An important aspect that Section 125 CrPC aims to achieve is to protect persons who cannot sustain themselves on their own. In India, it is usually women who fall into that category because of social reasons as well as economic dependence. A gender-neutral provision might vitiate the special protection that women have now.

**Historical Disadvantage:** Indian society has always preferred women to be subordinated. Education, employment, and financial independence for women have not been considered imperative. Even in the modern era, a considerable section of women continues to depend on their spouses for economic support. The existing scheme does take note of this vulnerability and provides women with legal recourse to demand maintenance.

**Role of Homemakers** Women who selflessly commit themselves to homemaking contribute a lot to the family but lack direct financial earnings. Gender neutral law may thus devalue their unpaid labor since it would put them at a par with earning spouses when it comes to matters of maintenance cases.

**Special Protection as a Necessity:** Unlike equality, equity requires customised remedies for structural inequalities. Section 125 CrPC is equitable in its measure, first and foremost, by giving precedence to the protection of women, acknowledging systemic barriers to their equality. Removing this precedence under a gender-neutral frame of reference would disproportionately strike at women.

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<sup>21</sup> Ratna Kapur, “‘Belief’ in the Rule of Law and the Hindu Nation and the Rule of Law” OUP Academic, 2019 available at: <https://academic.oup.com/book/36682/chapter/321721711> (last visited November 21, 2024).

## 6.2 Social and Economic Disparities

India continues to face huge social and economic inequalities between its genders. These would naturally make it challenging for gender-neutral maintenance laws to be applied equitably.

**Gender Wage Gap:** Women in India earn half as much as males, even in comparable positions. Such an economic gap leaves the female incompetent and vulnerable in contested cases wherein even maintenance is awarded on an earning capacity basis. A gender-neutral provision may thus fail to account for this structural inequality and leave women without adequate protection.

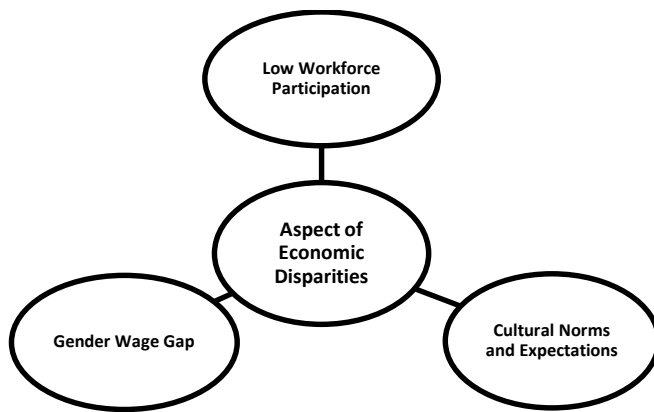
**Low Workforce Participation:** Female workforce participation is very low in India. Most women are financially dependent on their spouses with little or no one's earnings of their own. A gender-neutrality maintenance law might unfairly penalize women for being financially dependent while the society hinders the opportunity to have own financial independence.

**Cultural Norms and Expectations:** Societal expectations over marriage often dissuade women from seeking economic autonomy. Most women put care and household work above their career, thus leaving themselves to the economic ramifications in case of marital conflict. Gender-neutral laws may ignore these facts and treat both partners as being financially equal without taking into account their very different circumstances.<sup>22</sup>

### Economic Disparities Overview:

Aspect	Impact on Maintenance Laws
Gender Wage Gap	Women earn less than men, affecting fair determination of maintenance obligations.
Workforce Participation	Low female employment rates lead to economic dependence on spouses.
Societal Expectations	Cultural norms discourage women from pursuing financial independence, limiting options.

<sup>22</sup> Pooja Sengupta and Roma Puri, "Gender Pay Gap in India: A Reality and the Way Forward—An Empirical Approach Using Quantile Regression Technique," 10 *Studies in Microeconomics* 50–81 (2021).



(Figure 5: Aspect of Economic Disparities)

### 6.3 Balancing Equity and Special Protection

Critics of the gender-neutrality approach to laws on maintenance stress the need for a balance between equity and special protection. While equality, as a goal, is highly desirable, achieving it should not cost steps in giving disadvantages to vulnerable sections of society.

**Constitutional Perspective:** Article 15(3) of the Indian Constitution empowers the state to make special provisions for women and children. This provision is a case in point: Section 125 CrPC is an affirmative measure aimed at meeting the specific vulnerabilities women face in matrimonial relationships. Interpreting this provision in a gender-neutral manner would be against the constitutional purpose of ensuring equity in favor of women through affirmative measures.

**Maintaining Equity in Practice:** Equity means providing differential levels of support based on the particular needs and circumstances of individuals. Under laws of maintenance to be gender-specific, there are special provisions taken care of the women in marriage and divorce due to their being disadvantaged in courts. A gender-neutral blanket solution will fail to maintain equity because both men and women are assumed to start off at a level socio-economically.

**Unintended Criticism of Safeguards:** The eradication of gender-specific provisions may unintentionally lead to reduced legal recourse for women suffering at the hands of abusive or neglectful partners. In fact, special protection under Section 125 ensures that a woman is not left without any means to sustain herself when she does not have enough to support herself.<sup>23</sup> Maintenance laws, though gender-neutral, have to be applied judiciously against the backdrop

<sup>23</sup> IJLSI, “2. A Critical Study of the Gender Neutral Rights in India” *International Journal of Legal Science and Innovation*, 2020 available at: <https://ijlsi.com/a-critical-study-of-the-gender-neutral-rights-in-india/> (last visited November 22, 2024).

of socio-economic realities and cultural norms in India. Women, being an inherently disadvantaged group throughout history, continue to face systemic barriers that make them a potential candidate for special protection under various law provisions like Section 125 CrPC. Arguments against gender neutrality are presented by focusing on equity rather than equality. Focusing on the protection of the most vulnerable women, paying attention to economic disparities, and making special efforts to the contribution that does not bear fruits directly in monetary terms, the current system finds relevance to fairly outcome-based mechanisms. In moving toward gender-neutrality, the introduction of protecting women's rights and interests is crucial; it reflects a more balanced approach of fairness with societal realities.

## 7. NEED FOR REFORM IN MAINTENANCE LAWS

The existing maintenance laws of India, especially Section 125 of the Criminal Procedure Code (CrPC), have been extensively instrumental in protecting the rights of dependents. However, the dynamic nature of societal elements as well as constitutional values call for some amendments so that maintenance laws are current and fair. Proper legislative filling, incorporation of principles of gender equality, and social consciousness will help modernize the maintenance laws.

### 7.1 Legislative Gaps and Suggestions

While this Section 125 of CrPC helps dependents who are not in a position to maintain themselves, it has many limitations and needs legislative reforms.

**Definition of "Wife":** The present definition provided in Section 125 is narrow, excluding only those relationships outside of the scope of lawfully recognized marriages. It is because of this lack of scope that individuals enter into live-in relationships and other non-traditional marital or contractual obligations are left without legal recourse. The definition must include all such relationships to reflect contemporary social realities, rendering protection all-inclusive.

**Absence of Guidelines for Maintenance Quantum:** Section 125 does not clearly prescribe criteria relating to the quantum of maintenance. Courts rely heavily on discretion, often resulting in incongruous decisions. The determination of statutory guidelines for assessing maintenance, considering factors such as income, standard of living and other non-monetary contributions could help provide fairness and consistency.

**Exclusion of Reverse Claims:** Section 125 permits a woman, or her dependents, to claim maintenance but does not address the situation of a financially self-sufficient woman who might have obligations on her dependents or husband. The insertion of a reverse provision,

upon true need, will prevent this unbalanced equation while maintaining the principle of equity.<sup>24</sup>

**Suggestions for Reform:**

Area of Reform	Proposed Changes
Definition of “Wife”	Broaden to include live-in partners and non-traditional relationships.
Guidelines for Maintenance Quantum	Introduce statutory criteria to ensure consistency and fairness.
Reverse Maintenance Claims	Allow claims against women in cases of financial dependence or genuine need.

**7.2 Incorporation of Gender Equality Principles**

Gender inequality is not tolerated under the India Constitution where laws regarding maintenance found in Articles 14, 15, and 21 intend to ensure that the laws are fair and without discrimination.

**Recognition of Mutual Obligations:** In modern times, a relationship is recognized as carrying mutual obligations. Thus, gender-neutral provisions would be utilized in order to reflect mutual obligations between spouses, and laws regarding maintenance would not be seen as gender-biased.

**Equal Valuation of Contributions:** Women generally provide substantial contributions to households through unpaid labor, whether it is in the form of home-making and care-giving. Reforms must stress the valuation of such contributions for fairness in the maintenance proceedings. Similarly, laws must recognize that men can be caregivers and even primary caregivers in some cases.

**Gradual transition to gender neutrality:** Gender neutrality may not be wholly applied because of existing social and economic disparities; however, the process can be gradual. Gender-neutral claims could be introduced under specific conditions. This would include equal financial standing between spouses. This would promote equality without impairing protection for the vulnerable ones.<sup>25</sup>

<sup>24</sup> Flavia Agnes, “Matrimonial Rights and Obligations” *OUP Academic*, 2012 available at: <https://academic.oup.com/book/10797/chapter/158949615> (last visited November 22, 2024).

<sup>25</sup> Diganth Raj Sehgal, “Legal provisions on gender equality: an analysis” *iPleaders*, 2021 available at: <https://blog.ipleaders.in/legal-provisions-gender-equality-analysis/> (last visited November 22, 2024).

### 7.3 The Role of Societal Awareness and Legal Education

Legal reforms would not bring out the desired results without appropriate attitudinal changes and consciousness of people around them. Public education as well as legal professionals would be an imperative for effective application of maintenance laws.

**Public Awareness Programs:** Most people are unaware of their legal rights under maintenance laws. The relevant programs for general public awareness, especially at the national level and focusing particularly on rural and marginalized communities, can fill this gap.

**Instruction** Should be made for training of legal stakeholders: such as judges, lawyers, and enforcement officials to have more gender-sensitive approaches to maintenance cases. This way, reforms would not have bias and learn to interpret the law fairly.

**Inclusion in Educational Curricula:** Teaching modules on equality and legal rights at school and college levels can instill awareness from a young age, thereby leading to progressive attitudes toward maintenance obligations.



(Figure 6: Focus Area of Societal Awareness Goals)

Reforms to the maintenance laws are in lieu of filling up the legislative gaps, infusing gender equality, and bringing in congruence with the changing dynamics of Indian society. Narrow definitions could be broadened. Statutory guidelines can be introduced to formalize the mutual obligations that may be recognized. Then again, greater equity in maintenance laws can be ensured by bringing about legal reforms in conjunction with public awareness and education. A holistic approach, which balances legal precision with societal readiness, will ensure that the maintenance laws continue to be a strong tool for justice and equality.

## 8. JUDICIAL INTERPRETATION

Indian law has the concept of maintenance whereby there is financial support given to individuals who cannot maintain themselves, which is often related to family ties. There are several landmark judgments that have defined and refined application with regard to 'provisions of maintenance under personal laws as well as under Code of Criminal Procedure, specifically Section 125. Such judgments reflect a balance between ensuring support to someone in need and preventing its misuse.

### 1. *Neeraj Aggarwal v. Veeka Aggarwal*<sup>26</sup>

In this case, it was the principle of "clean hands" that was emphasized by the Delhi District Court. A woman was praying for maintenance while hiding the fact that she had advanced educational qualifications and was capable of employment which invalidated the case that she was insisting on; well-educated people who can self-provide should not claim spousal maintenance, thereby reiterating that maintenance provisions are not applicable to those who can maintain themselves.

### 2. *Mamta Jaiswal v Rajesh Jaiswal*<sup>27</sup>

The court highlighted that maintenance provisions aim to help truly needy individuals and not the idler-in-waiting. The decision criticized a rather high-class educated woman for seeking financial support rather than employment. This stance reflects the court's argument that the so-called maintenance law protects vulnerable women but must not create dependency.

### 3. *FirdosMohd. Shoeb Khan v. Mohd. ShoebMohd. Salim Khan*<sup>28</sup>

In this case, there were false allegations of abuse to obtain maintenance and divorce. The court ruled that the able-bodied need to fend for themselves as giving undeserved maintenance upsets the balance of justice. This judgment warns against the exploitation of provisions on maintenance for personal benefits.

### 4. *Kumaresan v. Aswathi*<sup>29</sup>

In the case of the Madras High Court, Section 24 of the Hindu Marriage Act was interpreted which held that maintenance pendente lite is subject to the condition of having no substantial independent income. Maintenance laws apply in a context-specific manner; the quantum is determined by individual circumstances according to

<sup>26</sup> Neeraj Aggarwal v. Veeka Aggarwal, Delhi District Court M No. 28/07 (2007)

<sup>27</sup> Mamta Jaiswal v Rajesh Jaiswal II(2000)DMC170

<sup>28</sup> FirdosMohd. Shoeb Khan v. Mohd. ShoebMohd. Salim Khan Petition no. E119 of 2013

<sup>29</sup> Kumaresan v. Aswathi (2002)2MLJ760

personal laws such as the Hindu Marriage Act and the Hindu Adoptions and Maintenance Act. Such judgments highlight lapses in Section 125 of the CrPC that are sometimes misused by leaving excessive hardships on husbands and their in-laws.

5. *V.M. Arbat v. K.R. Sawai*<sup>30</sup>

In the case at hand, the Supreme Court decided whether daughters are liable to be kept under Section 125(1)(d) of the CrPC. The appellant relied on the term "his" in the statute, so relied the case, deeming maintenance liability only towards sons. The court denied it and extended the duty of maintenance to daughters, relying on moral obligations and the inclusive gender framework that applied to Section 13(1) of the General Clauses Act. This judgment confirmed that, irrespective of the child's gender, children by law and morality were obligated to provide for dependent parents.

6. *Vasant vs Govind Rao Naik*<sup>31</sup>

Here, it proved that maintenance duties are gender-neutral. The court held the view that all the children of sufficient ability must maintain their dependent parent. This order as interpreted and judicially justified that there should be recognition under Section 125. This complies with social expectations about family responsibilities while maintaining legal equality between genders.

## 9. CONCLUSION

The debate on necessity regarding gender neutrality in Section 125 of the Criminal Procedure Code reflects the changing dynamics of Indian society and its legal system. Maintenance laws for ages had been conceived with an aim to protect the economically weaker members of a family, which in the previous epochs was always the women and children. This stems from an historical understanding of how women have long been vulnerable in patriarchal structures and the systemic disadvantages they face in education, employment, and financial independence. However, changing times in gender roles and increasing expectations on equality have called for reconsideration on this gender-specific nature of provisions.

Behind the debate, there is the issue of equity and fairness. To gender-neutrality advocates, laws on maintenance should reflect the very constitutional equality principles enshrined in Articles 14 and 15 of the Constitution. They argue that relationships, nowadays, are more collaborative than before and that men also get themselves into situations where they become

<sup>30</sup> V.M. Arbat v. K.R. Sawai, 2 SCC 218, (1997)

<sup>31</sup> Vasant vs Govind Rao Naik 2019 ALL MR (Cri) 1539

dependent on the pocketbook. A gender-neutral approach would also ensure equality in law treatment while at the same time attain the needs of all, regardless of the gender. In addition, a gender-neutral strategy might have the effect of dismantling stereotypical myths among men concerning masculinity and hence make them overcome their reluctance to ask for support.

On the contrary, critics have been warning that gender neutrality cannot be applied at all costs considering the socio-economic realities in India. The fact remains that women are not relatively empowered to achieve independence through financial means because women are facing more barriers to workforce participation, pay disparities, and societal attitudes. In the same context, gender-specific provisions like Section 125 exist to treat the disadvantageous nature of the inherent treatment accorded to women. Critics thus argue that the aim of gender neutrality could unwittingly weaken legal protections available to economically vulnerable women by removing these very protections.

The way forward is indeed by striking a balance between equality and equity. There is an element of merit in making maintenance laws more representative while not diluting the safeguards for vulnerable individuals. A phased approach to gender neutrality, coupled with stronger safeguards, could therefore be a possible solution. For example, to let gender-neutral claims where both spouses enjoy relative parity in financial positions would promote fairness without undermining the intent of the law. In addition, reforms should take into consideration the contributions of the spouses that are not monetary, like care and household responsibilities, so that maintenance claims are properly assessed in a holistic manner.

More importantly, reforming maintenance laws calls for greater societal transformation. Public sensitization programs, legal education projects, and judicial and legal educative training should be done to embrace the new provisions and implement them effectively. Similarly, the cultural stigma against men considering maintenance needs to be addressed so that all effects of legal changes reach the implementation world.

This debate over gender neutrality in Section 125 CrPC thus assumes significance in the context of balancing legal equality and social equity-the complexities of which are pretty vexed. While the law has to grow with society, reforms need to be carefully designed for unique vulnerabilities that characterize different groups. By adopting such a holistic approach which combines legislative precision with societal awareness, India may well create a maintenance framework that is both inclusive and just, where the rights of and needs of all individuals are better addressed.

## 10. SUGGESTIONS/LIMITATIONS

### Suggestions

To meet the changing needs of Indian society, Section 125 CrPC should introduce gender-neutral provisions while continuing to protect vulnerable people. The proposal should be implemented in two stages: allowing claims for maintenance by economically dependent spouses, regardless of gender, based on an equal evaluation of financial and non-monetary contributions, and establishing statutory principles governing the amount of maintenance based on, among other things, income and a standard of living, and caregiving responsibilities. The definition of "wife" should be extended to cover live-in partners and non-traditional relationships to reflect contemporary realities. Awareness programs and gender-sensitive training among legal stakeholders can aid these reforms and minimize resistance within society.

### Limitations

In making maintenance laws in line with gender-neutrality, societal stigma for men to claim maintenance and resistance by some towards a change in the role of genders continue to be a threat. Cultural inhibitions against the independence of women in finance will also affect the attainment of gender-neutral laws. Overstretched courts may carry higher caseloads with increased eligibility, and again, financial disparity between the two sexes may face unforeseen woes among women if the structure is not well laid. Addressing all these shortcomings would therefore call for a balanced approach placing equity over strict equality, supported by widespread societal and institutional readiness to embrace change.

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