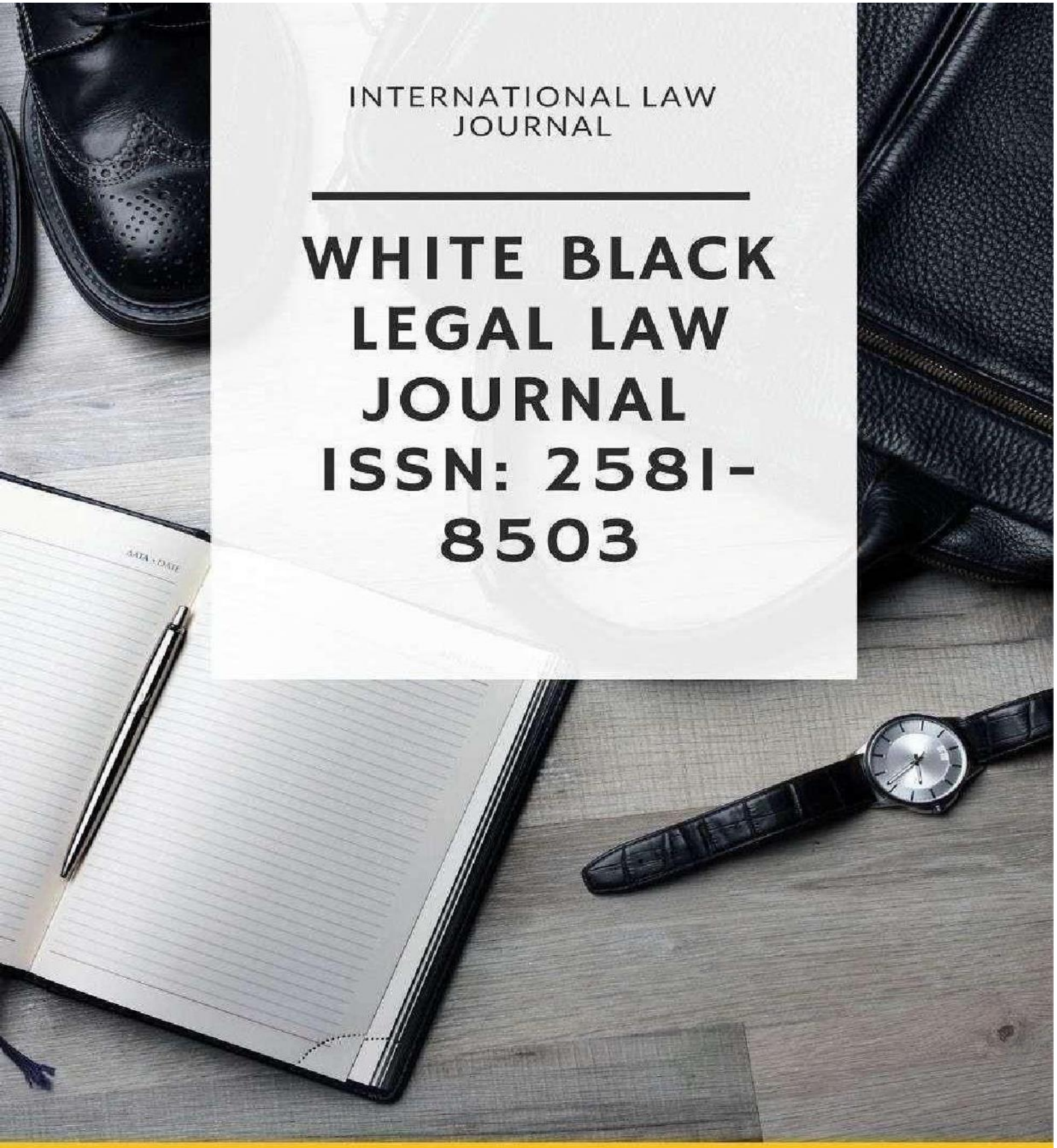


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MAINTENANCE UNDER THE HINDU MARRIAGE ACT, 1955: RIGHTS OFI SPOUSES, DETERMINATIVE FACTORS AND THE JUDICIAL APPROACH

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Abstract

Maintenance is the legal mechanism through which a financially weaker spouse secures support during and after matrimonial proceedings. Sections 24 and 25 of the Hindu Marriage Act, 1955 ("HMA") empower courts to award interim and permanent maintenance but supply no formula for quantum, leaving the outcome to judicial discretion. This paper examines the statutory framework of maintenance under the HMA, the rights of spouses under Sections 24 and 25, the factors that determine awards, and the approach of the Supreme Court of India, with particular attention to *Rajnesh v. Neha* (2021). It argues that the law is sound in principle but weak in practice because of delay, inconsistent quantum, difficulty of enforcement, outdated gendered language in Section 25(3) and the absence of a matrimonial property regime. The paper concludes with reform suggestions aimed at making the remedy timely, transparent and gender-neutral.

Keywords: maintenance; alimony; pendente lite; Hindu Marriage Act, 1955; *Rajnesh v. Neha*; affidavit of disclosure; matrimonial law

1. Introduction

Under classical Hindu law, marriage was a sacrament, and the husband's duty to maintain his wife arose from the marital relationship itself, independent of any property he held.[1] The HMA modernised the law of marriage and divorce and, through Sections 24 and 25, created a statutory machinery by which a spouse lacking adequate means can obtain financial support from the other during and after matrimonial litigation.[2] The provisions are framed in gender-neutral language, yet their working has been shaped largely by the lived reality of women who, after marriage, are often economically dependent.

Maintenance is closely tied to constitutional values. Article 15(3) permits the State to make special provisions for women, and Article 39 directs the State towards adequate means of

livelihood and equal opportunity.[3] Maintenance law is therefore best understood as a tool for translating substantive equality into the intimate sphere of marriage.

1.1 Statement ofi the Problem

The HMA directs the court to award maintenance that is reasonable but offers no formula for arriving at it. This discretion produces uncertainty: awards vary from court to court, litigants disagree on what counts as income, and delay often defeats the very purpose of interim relief. This paper examines how courts have filled that gap.

1.2 Research Objectives

1. To explain the concept and rationale of maintenance in matrimonial law.
2. To examine the rights of spouses under Sections 24 and 25 of the HMA.
3. To identify the statutory and judicially evolved factors used to fix maintenance.
4. To analyse the approach of the Supreme Court and to suggest reforms.

1.3 Research Questions

1. How do Sections 24 and 25 of the HMA operate, and who may invoke them?
2. What factors guide courts in determining the quantum of maintenance?
3. Has the Supreme Court succeeded in bringing uniformity and certainty to the field?
4. What reforms are needed to make the remedy effective?

1.4 Research Methodology

The study is doctrinal. It relies on primary sources (statutes and Supreme Court judgments) and secondary sources (textbooks and Law Commission reports). Citation follows the Indian Law Institute (ILI) style.

2. Concept and Statutory Framework ofi Maintenance

2.1 Meaning and Rationale

The HMA does not define "maintenance". The Hindu Adoptions and Maintenance Act, 1956 ("HAMA") defines it to include food, clothing, residence, education, and medical attendance and treatment, and, for an unmarried daughter, the reasonable expenses of her marriage.[4] Although framed for HAMA, this definition is regularly used by courts as a guide to the content of the term.

The rationale of maintenance is social justice. The Supreme Court has described the corresponding criminal remedy as a measure of social legislation, intended to prevent destitution and vagrancy and rooted in Article 15(3).[5] The principle that a divorced woman's claim to support is a civil right transcending religious personal laws received strong judicial affirmation in *Mohd. Ahmed Khan v. Shah Bano Begum*.[6] The same philosophy informs Sections 24 and 25 of the HMA.

2.2 The Scheme of the HMA

Four provisions of the HMA bear directly on financial relief:

- **Section 24:** maintenance *pendente lite* and expenses of the proceedings.
- **Section 25:** permanent alimony and maintenance.
- **Section 26:** custody, maintenance and education of minor children.[7]
- **Section 28A:** enforcement of decrees and orders in the same manner as decrees of a civil court.[8]

Section 27, which deals with the disposal of property presented at or about the time of marriage that belongs jointly to the spouses, is also relevant, although it is far narrower than a general matrimonial property regime.

2.3 Parallel Remedies

A spouse's claim for support does not rest on the HMA alone. A Hindu wife may claim maintenance under Section 18 of HAMA, which entitles her to be maintained by her husband during her lifetime.[9] She may also invoke Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced Section 125 of the Code of Criminal Procedure, 1973.[10] Further, the Protection of Women from Domestic Violence Act, 2005 provides monetary relief and expressly states that its remedies are in addition to other laws.[11]

This multiplicity creates a risk of overlapping orders and inconsistent claims. In *Rajnesh v. Neha*, the Supreme Court addressed the problem directly, requiring a litigant to disclose earlier maintenance orders and directing that maintenance awarded in a subsequent proceeding be adjusted against what has already been granted.[12]

3. Rights of Spouses under Sections 24 and 25

3.1 Interim Maintenance: Section 24

Section 24 applies in any proceeding under the HMA, whether for restitution of conjugal rights,

judicial separation, nullity or divorce. Its essential features are:

- The applicant may be the husband or the wife.
- The applicant must show that he or she has no independent income sufficient for his or her support and for the necessary expenses of the proceeding.
- The court may direct the other spouse to pay such sum for expenses and such monthly amount during the proceeding as appears reasonable, having regard to the incomes of both parties.
- The application is to be disposed of, as far as possible, within sixty days of service of notice on the respondent.[13]

Two points deserve emphasis. First, the test is the sufficiency of independent income and not absolute destitution. The Supreme Court has explained, in the context of the criminal provision, that the expression "unable to maintain herself" does not require the applicant to be wholly without resources.[14] The same practical approach is applied to Section 24. Second, the right to litigation expenses is distinct from the right to monthly maintenance, so that a spouse of limited means is not forced to abandon a genuine claim for want of funds.

In *Rajnesh v. Neha*, the Court held that interim maintenance should ordinarily be payable from the date of the application, since the hardship of the dependent spouse begins when the proceeding begins.[15]

3.2 Permanent Alimony: Section 25

Section 25 empowers the court, on the application of either spouse, to order payment of maintenance at the time of passing any decree or at any time afterwards. The court may direct a gross sum or a monthly or periodical sum for a term not exceeding the life of the applicant, and may secure payment by a charge on the immovable property of the respondent.[16] Three features are noteworthy.

a) **Variation.** Under Section 25(2), if circumstances change, the court may vary, modify or rescind its order. The right is therefore not frozen at the date of the decree and can respond to a real change in the income or needs of either party.

b) **Rescission.** Under Section 25(3), the order may be varied or rescinded if the recipient has remarried or, in the case of a wife, has not remained chaste, or, in the case of a husband, has had sexual intercourse with a woman outside wedlock.

c) **Gender neutrality and its limits.** Either spouse may claim. In practice, claims by wives predominate because of persistent economic inequality, and a husband is expected

to establish genuine inability to support himself. Feminist scholarship has criticised the "chastity" language of Section 25(3) as reflecting a patriarchal view of marital obligation. [17]

3.3 Claims Arising firom Void and Voidable Marriages

Section 25 speaks of "any decree", which textually includes decrees of nullity. The position is less settled under other maintenance statutes. In *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav*, the Supreme Court held that a woman whose marriage is void is not a "wife" for the purposes of the criminal maintenance provision.[18] A more purposive approach was adopted in *Badshah v. Urmila Badshah Godse*, where the Court read the provision beneficially to protect a woman who had been deceived into a marriage.[19] The two lines of reasoning show the tension between strict legality and substantive justice.

3.4 Rights ofi Children

The rights of a spouse are separate from those of the children. Under Section 26, the court may, in any proceeding under the Act, pass interim and final orders regarding the custody, maintenance and education of minor children, guided by their wishes and welfare.[20]

4. Factors fior Determination ofi Maintenance

4.1 Statutory Factors

Section 24 refers to the income of the applicant and the income of the respondent. Section 25(1) is wider: it directs the court to consider the respondent's income and other property, the income and other property of the applicant, the conduct of the parties, and the other circumstances of the case.[21] These heads form the statutory foundation of every award.

4.2 Judicially Developed Factors

Because the statutory language is open-textured, the Supreme Court has laid down guidelines. In *Rajnesh v. Neha*, the Court indicated that considerations of the following kind are relevant, though not exhaustive:[22]

- the status of the parties;
- the reasonable needs of the applicant and of dependent children;
- the qualifications and employment status of both parties;
- independent income or assets of the applicant;

- the standard of living enjoyed in the matrimonial home;
- any employment or career opportunities sacrificed for the family;
- reasonable litigation costs where the applicant is not working; and
- the financial capacity, obligations and liabilities of the respondent.

Courts also routinely weigh the age and health of the parties, the duration of the marriage and the existence of children. In *Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy*, the Court reiterated that the award must reflect the applicant's reasonable needs and the respondent's real capacity to pay.[23]

4.3 Income, Earning Capacity and the Working Spouse

One of the most contested questions is whether a qualified but non-earning spouse may be denied maintenance. The Supreme Court has drawn a firm distinction between capacity to earn and actual earning. In *Shailja v. Khobbanna*, the Court held that merely because a wife is capable of earning does not mean she should be forced to do so, or that the husband is relieved of his duty.[24] The corollary is that where the applicant actually earns enough to meet reasonable needs, the claim for interim maintenance weakens.

The respondent, on the other hand, cannot avoid liability by pleading unemployment while being capable of earning. In *Shamima Farooqui v. Shahid Khan*, the Court observed that a husband must provide for his wife even if he has to earn through physical labour, unless a legally recognised ground of disentitlement exists.[25]

4.4 Quantum and Benchmarks

There is no fixed formula, but courts have used a rough guide. In *Dr. Kulbhushan Kumar v. Raj Kumari*, the Court regarded one-fourth of the husband's net income as a reasonable amount of permanent alimony in the circumstances of that case.[26] The benchmark was reiterated in *Kalyan Dey Chowdhury*.[27] In *Rajnesh v. Neha*, the Court accepted it as a useful reference but cautioned that it must not be applied mechanically, because each case turns on its own facts.[28]

4.5 Conduct ofi the Parties

Conduct is expressly mentioned in Section 25(1). Misconduct such as cruelty or desertion may affect the quantum or, in an extreme case, the entitlement. Courts are, however, generally careful not to convert maintenance into a punishment for fault, since its purpose is to meet need. The grounds in Section 25(3) show that post-decree conduct, such as remarriage,

directly affects continuing entitlement.

4.6 Disclosure ofi Assets and Liabilities

A major contribution of *Rajnesh v. Neha* is the requirement that both parties file an affidavit of assets and liabilities in every maintenance proceeding, whatever the statute invoked. A false or misleading affidavit can attract consequences of contempt and perjury.[29] This addresses the practical problem of concealed income and gives the court a reliable factual base.

4.7 Lump Sum versus Periodic Payment

Section 25 permits either a gross sum or periodic payments.[30] A lump sum offers finality and reduces the scope for future disputes, while periodical payments protect the recipient against exhaustion of funds and remain open to variation under Section 25(2).

Courts select the mode depending on the stability of the respondent's income, the age of the applicant and the risk of default.

5. Judicial Approach: An Analytical Study

5.1 From Discretion to Social Justice

Early decisions treated maintenance as a matter of broad judicial discretion, with modest awards and an emphasis on the husband's status. *Kulbhushan Kumar*, which proposed a proportion of income as a guide, was an early attempt at predictability.[31] Subsequent decisions adopted a more expressly constitutional and welfarist reading. The Supreme Court emphasised that maintenance provisions protect women and children, are to be interpreted liberally, and aim to secure dignity and not mere survival.[32] In *Bhuwan Mohan Singh v. Meena*, the Court also criticised delay in the disposal of maintenance cases, observing that a remedy intended to prevent starvation loses its meaning when proceedings run for years.[33]

5.2 The Guideline Phase

The modern approach is marked by *Rajnesh v. Neha*, which sought to bring uniformity. It addressed overlapping jurisdictions, mandated disclosure affidavits, indicated criteria for quantum, fixed the commencement of interim maintenance from the date of the application, and discussed modes of enforcement.[34] The decision reflects a shift from case-by-case discretion to structured discretion.

5.3 Maintenance and the Dissolution ofi Marriage

In recent years, the Supreme Court has used Article 142 of the Constitution to dissolve marriages that have broken down irretrievably while attending to the financial terms between the parties.[35] This reflects growing judicial awareness that divorce without economic protection can cause hardship, particularly to the spouse who has been out of the workforce. The Law Commission had earlier recommended that irretrievable breakdown be recognised as a ground of divorce, subject to safeguards for the financial interests of the wife and children.[36]

5.4 Key Themes in Judicial Reasoning

- **Need-based, not punitive:** the focus is on reasonable support rather than punishment of a guilty spouse.
- **Actual earning over earning capacity:** a spouse is not presumed self-sufficient merely because of qualifications.
- **Primary obligation of the earning spouse:** a respondent cannot escape liability by pleading unemployment while able to work.
- **Transparency:** reliable, sworn disclosure of finances is now a prerequisite.
- **Avoidance of duplication:** overlapping claims under different statutes are to be adjusted, not multiplied.

6. Critical Analysis

Discretion and inconsistency. Despite the guidelines, awards still differ widely across courts and regions. The open-ended phrase "other circumstances of the case" leaves considerable room for subjective assessment.

Delay. The sixty-day period in the proviso to Section 24 is directory in practice, and in many courts interim applications remain pending for long periods, undermining the purpose of interim relief.

Enforcement. Although Section 28A allows enforcement as a civil decree, recovery from a respondent who is self-employed or in the informal sector remains difficult, particularly where income is under-reported.

Gendered language. The reference to the wife's "chastity" in Section 25(3), set against a differently worded condition for the husband, is out of step with contemporary constitutional values of equality and dignity.

Absence of a matrimonial property regime. Indian law has no general scheme for division of

property acquired during marriage. Section 27 is narrow, so a homemaker's non-monetary contribution is recognised only indirectly through maintenance, which may be insufficient.

Misuse and under-protection. Both are real concerns. Some respondents allege misuse of the law, while many genuine claimants are left without effective relief. The solution lies in stronger fact-finding rather than in diluting the right.

7. Suggestions

1. Enforce the sixty-day timeline strictly, with a duty on courts to record reasons for any delay.
2. Strengthen scrutiny of the disclosure affidavit, using bank records, tax returns and, where necessary, investigation of concealed assets.
3. Amend Section 25(3) to a gender-neutral and conduct-neutral standard, linked to change in financial circumstances rather than moral assessment.
4. Consider a statutory framework for division of matrimonial property that recognises the economic value of domestic work.
5. Provide legislative or judicial guidance on the proportion of income ordinarily awardable, with flexibility for individual cases.
6. Promote mediation and settlement of maintenance disputes, backed by safeguards against coercion and by court approval of terms.

8. Conclusion

Maintenance under the Hindu Marriage Act, 1955 is a vital instrument of economic justice in matrimonial law. Sections 24 and 25 recognise the right of a spouse without sufficient means to receive support during and after proceedings, and the statutory language is formally gender-neutral. The factors for fixing maintenance, namely the incomes and property of both parties, their conduct and the other circumstances of the case, have been enriched by the Supreme Court through considerations such as the standard of living, sacrificed career opportunities and the respondent's liabilities.

The judicial approach has evolved from loose discretion, through a welfarist reading rooted in Articles 15(3) and 39, to the structured guidelines in *Rajnesh v. Neha*. Courts consistently stress that maintenance must be need-based, evidence-driven and not punitive, and that actual earning, not mere capacity to earn, is what matters. Yet delay, inconsistent quantum, difficulties of enforcement and the outdated language of Section 25(3) still limit the effectiveness of the

law.

The law on maintenance is sound in principle but requires improvement in practice. Timely disposal, reliable financial disclosure, gender-neutral drafting and recognition of non-monetary contribution within marriage would make the remedy more effective and bring the HMA closer to the constitutional promise of equality and dignity.

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