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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GENDER-NEUTRAL APPLICATION OF POST-DIVORCE MAINTENANCE UNDER SECTION 25 OF THE HINDU MARRIAGE ACT: A CASE STUDY OF BHAGYASHRI JAISWAL V. JAGDISH JAISWAL (2022)

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INTRODUCTION

The decision in *Bhagyashri Jaiswal v. Jagdish Sajjanlal Jaiswal* (2022) represents a pivotal case in Indian jurisprudence regarding the structural gender neutrality of continuing maintenance for a spouse post-marriage dissolution. It highlights the evolving application of provisions within the Hindu Marriage Act of 1955, particularly sections 24 and 25, which allow either party to a marriage to seek maintenance after separation or divorce. This case starkly illustrates judicial activism concerning gender fairness and equity, acknowledging that socio-economic marginalization exists beyond a single gender. It reflects the significant changes society has undergone since the old dowry system and how the law often presumes societal norms.

The lower court ruling was upheld by the Bombay High Court, which determined that Sections 24 and 25 of the Hindu Marriage Act do not discriminate, as they are designed to assist the economically dependent partner, irrespective of their gender. This judgment reinforced the principle of equality in matrimonial laws and broadened the understanding of spousal support in Indian jurisprudence.¹

¹ *Bhagyashri Jaiswal v. Jagdish Sajjanlal Jaiswal & Anr.*, Writ Petition No. 2527 of 2021, Bombay High Court (Feb. 26, 2022), <https://www.daaman.org/jd/bhagyashri-jaiswal-vs-jagdish-sajjanlal-jaiswal-and-anr/husband-can-also-invoke-provision-for-maintenance-permanent-alimony-under-hindu-marriage-act>.

BACKGROUND

The case of *Bhagyashri Jaiswal v. Jagdish Sajjanlal Jaiswal & Anr.* (2022) revolves around a matrimonial dispute where the husband sought maintenance from his ex-wife under the Hindu Marriage Act, 1955.

The couple married on April 17, 1992, and their marriage was dissolved on January 17, 2015, following a divorce petition filed by the wife on grounds of cruelty and desertion. Post-divorce, the husband applied to Sections 24 and 25 of the Act, claiming he had no source of income or property and was financially dependent. He requested ₹15,000 per month as permanent alimony.

The wife, who is a school teacher with MA and BEd degrees, contested this claim, asserting that the husband had income from a grocery store and by leasing out an auto-rickshaw. In 2017, the Nanded court directed the wife to pay ₹3,000 per month as interim maintenance. Due to non-compliance, in 2019, the court ordered ₹5,000 to be deducted from her salary to cover arrears.

The wife challenged these orders in the Bombay High Court, arguing that maintenance claims post-divorce were not maintainable. However, the High Court upheld the lower court's orders, emphasizing that Sections 24 and 25 of the Hindu Marriage Act are gender-neutral and can be invoked by either spouse, even after divorce, to ensure financial support for the indigent party.²

ISSUES FOR CONSIDERATION

- 1. Whether a husband can seek maintenance or permanent alimony from his wife under Sections 24 and 25 of the Hindu Marriage Act, 1955?** This issue examines the gender-neutral nature of the Hindu Marriage Act and whether it allows husbands to claim maintenance post-divorce, challenging traditional gender roles.
- 2. Whether the grant of interim maintenance to the husband was legally justified in light of the wife's objection regarding his alleged income sources?** This considers the evidentiary value and burden of proof concerning the financial condition of both parties.

² "Woman to Pay Her Ex-Husband Maintenance: Bombay High Court," *Prime Legal*, <https://blog.primelegal.in/woman-to-pay-her-ex-husband-maintenance-bombay-high-court/> (last visited Apr. 22, 2025).

3. **Whether the execution of salary deduction for the recovery of maintenance dues was permissible under the law?** This relates to the enforcement of maintenance orders and the legal remedies available in case of non-compliance.
4. **Whether the application under Section 25 for permanent alimony remains maintainable after the grant of the divorce decree?** This involves interpreting whether such a claim can be entertained post-divorce or whether it should have been raised during the pendency of the divorce proceedings.

MAIN POINTS:

1. **Post-Divorce Maintenance:** The central issue is whether a husband can claim maintenance from his wife after a decree of divorce has been granted. The wife argued that the dissolution of their marriage severed their legal relationship, precluding any claims against each other.
2. **Interpretation of Section 25:** The Court focused on interpreting the phrase "at any time subsequent thereto" within Section 25 of the Hindu Marriage Act. This section allows a court to order maintenance payments to either spouse at the time of the decree or any time afterward.
3. **Beneficial Provision:** The Court emphasized the beneficial nature of Section 25, designed to protect the financially weaker spouse, regardless of gender. A restrictive interpretation limiting its application to only married couples would contradict its purpose.
4. **Apex Court Precedent:** The judgment cited the Supreme Court's ruling in **Chand Dhawan v. Jawaharlal Dhawan (1993)**. This case affirmed that courts retain jurisdiction to grant permanent alimony even after a divorce, considering it ancillary to the affected marital status.
5. **Wide Construction of Section 25:** The Court held that Section 25 must be interpreted broadly to fulfill its remedial objectives. Limiting its scope to specific decree types (excluding divorce) would be inconsistent with legislative intent.

KEY QUOTES:

- Section 25 of the Hindu Marriage Act: "Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent

shall pay to the applicant..."

- Chand Dhawan v. Jawaharlal Dhawan (1993): "...under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated (sic) on the pendency of a litigation... and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree..."

- Justice Danger: "The provision of maintenance / permanent alimony being a beneficial provision for the indigent spouse, the said section can be invoked by either of the spouses, where a decree of any kind governed by Sections 9 to 13 has been passed..."

KEY CONTENTIONS

PETITIONERS' CONTENTIONS:

Post-Divorce Maintenance Not Maintainable: In this case, the wife argued that maintenance could not be posed as a claim because the divorce was already granted in 2015, and hence, post-divorce, the husband could not seek maintenance under Section 25 of the Hindu Marriage Act.

Husband Has Independent Source of Income: The wife also argued that the husband was not financially dependent because he possessed a grocery shop and also earned from renting out an auto rickshaw, thus making him ineligible to claim maintenance.

Maintenance Reduction Not Justified: The order that required her to pay ₹3,000 per month as interim maintenance and deduct ₹5,000 from her salary for dues was, in her opinion, draconian and unjustified.

RESPONDENTS' CONTENTIONS:

Alleged Claim of Financial Inability to Maintain Himself: In this argument, the husband claimed that post-divorce, he remained unemployed and without a stable income, perpetually living without the means to support himself financially.

Right to Maintenance Is Gender Neutral: Section 25 of The Hindu Marriage Act argues that regardless of gender, any spouse has the right to claim the permanency of alimony or maintenance if they are incapable of self-sustenance.

Claiming Justification of Interim Maintenance: While claiming permanent alimony was pending, the husband applied for maintenance under Section 24 to survive the proceedings.³.

³ "Woman to Pay Her Ex-Husband Maintenance: Bombay High Court," *Prime Legal* (2022), available at: <https://blog.primelegal.in/woman-to-pay-her-ex-husband-maintenance-bombay-high-court>

IMPACTS OF THE CASE

1. Gender-Neutral Rights of Maintenance Under Agress Affirmation

The decision has made it very clear that both males and females have an equal right to claim maintenance or alimony under Sections 24 and 25 of the Act. This has given society a new perspective because, by default, the assumption was that only women are financially dependent on their husbands post-marriage.

2. Patriarchal Stereotypes, Retrospective Gender Law Move

The Court directly confronted socio-legal patriarchal stereotypes in family law while granting a husband maintenance. He, being entitled and the law, regardless of socio-legal stereotypes, indeed softens the blow to financial vulnerability concepts as if gendered. Not caring to which gender the socio-economically weaker partner is, legislation has to afford protection to them regardless of their gender.

3. Provides Grounds for Other Similar Cases

This has set far-reaching judicial precedents for other husbands who seek maintenance and alimony irrespective of the wife's financial standing, or if she is earning much more. It can now be cited in such cases throughout the country.

4. Development of Equality Jurisprudence

This takes a step forward to attaining constitutional promises in Article 14 (right to equality before the law) and Article 15 (discrimination against a person based on sex) of the Indian Constitution, which makes it difficult to uphold the spirit of equality in marriage and post-divorce marriage relationships

5. Practical Implications for Working Women

On a societal level, this ruling brings attention to a changing reality: women are increasingly becoming primary breadwinners. The law must adapt to reflect these changes, ensuring fairness in matrimonial disputes⁴.

CRITICAL ANALYSIS

The judgment in *Bhagyashri Jaiswal v. Jagdish Sajjanlal Jaiswal & Anr.* Marks a pivotal development in Indian matrimonial jurisprudence by upholding the gender-neutral spirit of

⁴ Husband can also invoke provision for maintenance, permanent alimony under Hindu Marriage Act: Bombay High Court, *Bar & Bench* (Feb. 28, 2022), <https://www.barandbench.com/news/husband-can-also-invoke-provision-maintenance-permanent-alimony-under-hindu-marriage-act-bombay-high-court>.

Sections 24 and 25 of the Hindu Marriage Act, 1955. Traditionally, maintenance laws in India have often been interpreted in favor of women, based on the assumption of their economic vulnerability. However, this case breaks that conventional stereotype and acknowledges that men, too, can be financially dependent and deserving of support post-divorce. The Bombay High Court's ruling is progressive in that it aligns with the constitutional values of equality and non-discrimination under Articles 14 and 15. While the decision promotes fairness, it also invites a nuanced debate on whether maintenance laws should now be strictly need-based, rather than guided by outdated gender roles. Moreover, it brings attention to the evolving socio-economic roles in marriages, where wives can be financially stronger than husbands. Nonetheless, the judgment also necessitates safeguards to prevent misuse and ensure that genuine claims are not discredited due to emerging trends. Overall, the verdict is a forward-thinking reaffirmation of equality in matrimonial rights and responsibilities, making it a landmark moment in the journey towards gender-neutral family laws in India.

CONCLUSION

In conclusion, the case of *Bhagyashri Jaiswal v. Jagdish Sajjanlal Jaiswal & Anr.* Serves as a landmark judgment that redefines the interpretation of maintenance laws under the Hindu Marriage Act, 1955. By recognizing the husband's right to claim maintenance, the Bombay High Court has reinforced the principle that justice and legal entitlements must not be confined by gender. The decision is a progressive step towards ensuring equality and fairness in matrimonial matters, reflecting the evolving dynamics of modern relationships. It highlights the importance of assessing financial dependency based on actual need rather than traditional roles, thereby promoting a more balanced and just application of personal laws. This judgment is likely to influence future cases and strengthen the foundation for gender-neutral reforms in family law.

It stands as a progressive milestone in the evolution of Indian matrimonial law. The Bombay High Court's ruling not only clarifies the gender-neutral interpretation of Sections 24 and 25 of the Hindu Marriage Act, 1955, but also reflects the judiciary's commitment to upholding the constitutional values of equality, justice, and non-discrimination. By affirming that a husband can also seek maintenance if he is genuinely in need, the Court has challenged patriarchal assumptions that have long shaped maintenance jurisprudence. This decision acknowledges the changing socio-economic fabric of Indian society, where financial roles between spouses are

increasingly fluid. However, the case also raises important questions about the future of spousal support—whether maintenance should be granted purely on economic need, regardless of gender, and how to ensure that such provisions are not misused. As India moves towards more equitable family laws, this judgment will likely serve as a reference point for both legal reforms and future litigation. It reinforces that the objective of maintenance laws is to provide financial security to the economically weaker spouse, irrespective of their sex, thereby promoting substantive justice in matrimonial disputes.

