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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

GUARDIANS OF JUSTICE: LEGAL PROTECTION FOR WOMEN AND CHILDREN IN DIVORCE AND MAINTENANCE DISPUTES

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ABSTRACT

“Divorce and maintenance disputes create serious stressors on the fabric of society and the functioning of the judiciary, with females and children tending to be the most affected and vulnerable. Therefore, in relation to the Divorce-Maintenance Act, the primary focus of concern would be the protection given to women and children. This concern can further extend to assessing international conventions, local legislation, and judicial precedents to evaluate how far the current laws have been successful in dispensing justice and securing income. Considerations include spousal support, child maintenance, and alimony, with an emphasis on the interplay between personal law, secular statutes, and gender justice policies. Other persistent problems include faulty enforcement procedures, delays in procedure, and socio-economic obstacles that deter women from having timely and equitable relief. In examining legal systems in different jurisdictions, it throws light on best practices that may increase the efficacy and impact of maintenance laws.”

KEYWORDS: Alimony and Financial Justice, Child Custody, Divorce Laws, Gender Bias, Legal Protection, Maintenance Laws, Socio – Economic Barriers.

INTRODUCTION

In family law, divorce and related maintenance matters have an enormous bearing on the economic well-being of persons, especially women and children. For women, especially those who rely on the husband's earnings for living and are mostly at home, the impact of the failed marriages is more severe. Dependent children suffer the most at the disintegration of the family because there are usually not only financial implications but also psychological scars that will follow them into adulthood. Maintenance laws and divorce regulation intend to assure children as well as dependents, be they male or female, do not tend to suffer undue hardships after a family separation. Many contemporary laws and court decisions are facing quite a few challenges,

including delayed payment of maintenance, non-compliance with court orders, outdated views on gender in society, and procedural mistakes within the justice system.¹

IMPORTANCE OF LEGAL PROTECTION FOR WOMEN AND CHILDREN

In a patriarchal society, often, a husband would retain an additional hold on the financially dependent wife, needing strong legal provisions for both divorce and maintenance disputes. Maintenance laws generally are to provide financial help to the spouses and the children so that they are not forced to lead a bad life because of divorce. Such laws have very many viewpoints for understanding the necessity of why the laws are needed in the following ways:

- **Safeguarding Women's Economic and Social Rights**

Women, especially housewives, often face financial hardships after their divorce because they lose personal income sources. Maintenance laws fill this financial gap, providing for support so that most individuals can meet their subsistence needs. Legislative measures thus intend to protect the dignity of women, so they are not economically exploited.²

- **Ensuring the Well-being of Children**

Maintenance laws aid and protection for children, ensuring that they do not suffer through emotional disturbances, social isolation, financial adversities, and housing challenges. These same laws guarantee that a child benefits in the areas of education, health, and general welfare. Conversely, the non-custodial parent, through both internal and international laws, has the obligation to provide child support, thereby reinforcing the non-custodial parent's responsibility to care for his or her children.³

- **Prevention of Legal and Social Injustice**

The challenges to women securing maintenance payments abound, according to lawyers, some of which include the long delays in court proceedings, defiance on the part of the husbands, and ignorance of what the law provides. Because of stronger maintenance laws, women will

¹ Van Winkle, Z., & Leopold, T, et.al., "Family size and economic wellbeing following divorce: The United States in comparative perspective" Social science research, 96, 102541(2021). Available at <https://doi.org/10.1016/j.ssresearch.2021.102541> (Last visited on 10 March, 2025).

² Sinha and B, "Gender Justice and Family Law in India: A Critical Analysis" 60 Journal of the Indian Law Institute 1-27 (2018).

³ Uncrc, "Implementing Child Rights in Early Childhood." General Comment No. 7.

have an enhanced independence, which should limit the avenues available to them for an unjust settlement. The clearer the maintenance laws become, the better the courts can administer them and reduce litigation costs for parties.

GENDER BIAS AND SOCIO-ECONOMIC DISPARITIES IN DIVORCE

PROCEEDINGS

The Influence of Patriarchal Structures and Gender Stereotypes

The divorce trials are heavily influenced by long-established gender roles and social customs that assign specific tasks within a marriage to either men or women. In several cultures worldwide, women, mainly in India, are viewed as primary caregivers and homemakers, whereas men are seen as the financial providers. This division of roles affects the dynamics of divorce and maintenance litigation, often placing women in a systemic disadvantage thereby. While courts, in theory, are expected to be fair, in many instances, it is the social perceptions that have already found their way into the judicial reasoning. Women's emotional and economic contributions within marriages are often tacitly undermined in legal parlance.

Indian law encompasses the Hindu Marriage Act of 1955 and the Muslim Grants of (Protection of Rights on Divorce) Act of 1986⁴, has evolved through historical layers of patriarchal legal thought, many of which trace back to colonial-era statutes like the Special Marriage Act of 1854. Despite reforms against overt discrimination, deeply entrenched biases based on sex continue to flourish. A wife who files for divorce is often branded as one who has failed to fulfil her marital responsibilities, whereas a husband would be adjudged to have justifiable grounds for divorce on grounds such as incompatibility. These gendered perceptions may ultimately find expression in judicial discretion about such key issues as alimony, child custody, and property distribution, culminating in inequitable results for women.⁵

Gender stereotypes also influence how maintenance claims are treated in the courts. Evidence of reliance and justification of need for support are typically required from women, while the same approach is rarely taken toward scrutinizing a man's ability to give support. While the Supreme Court has tried to bring some level of consistency through *Rajnish v. Neha* in (2020),⁶

⁴ Muslim Women (Protection of Rights on Divorce) Act, 1986

⁵ Panda, P. "Right to Maintenance of Hindu Women under Hindu Adoption and Maintenance Act" Indian journal of applied research, 205-208(2016).

⁶ RAJNESH VS NEHA AIR 2021 SUPREME COURT 569, AIRONLINE 2020 SC 915

Therefore, even if there are guidelines that require financial disclosure from both parties, there is still an immense role for judicial discretion.

This may work adversely against women, who were financially dependent during marriage but are now being thrust into the expectation of being self-reliant and economically viable after a divorce, as this discretion is sometimes influenced by unconscious gender biases.

Examining Socio-Economic Influences on Legal Outcomes

The one thing which constrains and determines the accessibility of justice and the extent of quality in divorce and maintenance cases is the economic status of the person. Women who belong to economically backed or marginalized sections often do not have the means to retain an efficient lawyer or carry on a case for a longer period. Most of the women are not aware of free legal assistance provided under the Legal Services Authorities Act, 1987, whereas others prescribe overwhelming silos of procedures.⁷

On the other hand, wealthy men can systematically manipulate legal proceedings to suit their purposes. Affluent husbands frequently delay maintenance payments purposely, hide assets, and employ legal maneuvers like multiple appeals to financially and emotionally drain their wives. Quite a few studies have noted that such abusive conduct only exacerbates the economic vulnerability of women. However, the current backlog and delay in the court process also mean immediate relief is not available, which adds to the financial stress of any potential claimant. As to women earning informal status in work or domestic upliftment whose contributions are non-monetary, the impediment is asserting their economic worth during divorce proceedings. In the past, courts have failed to comprehend in reasonable measure the value of unpaid domestic work. However, progressive declarations of law, like that of *Vinny Parmvir Parmar v. Parmvir Parmar* (2011)⁸ Formally granting a special status to the homemaker has gone beyond any debate, the most just maintenance has been deemed their right. Elsewhere, the application of these principles is not a fully consistent one.

Thus, many women still experience terrible deficient financial support following their divorce, a picture of the still prevailing socio-economic and gender disparities of the existing system.

⁷ Taufiq Saleh, Taufiq Saleh, Khalisah Hayat Uddin And Arif Wisnu Wardhana, Et.Al., "Factors Of Unfulfilled Rights Of Wife And Children As Consequences Of Divorce In Religious Court Decisions" Sage Publications 33-45(2011).

⁸ *Vinny Parmvir Parmar V. Parmvir Parmar* , AIR 2011 Supreme Court 2748

Case Studies highlighting Gender Bias in Judicial Decisions

Various landmark decisions in India settle on the inherent gender bias existing in judicial reasoning in divorce and maintenance matters. The case of *Danial Latifi v. Union of India* [2001] 7 SCC 740⁹, The Supreme Court held that Muslim women have a right to fair and reasonable maintenance that extends beyond the iddat period. This was a landmark judgment which aimed to prevent destitution of divorced Muslim women and promote gender equality in personal laws. However, the implementation of such kind of rulings is somehow not uniform and very often conservative or financially backward Muslim communities do not comply.

Earlier, in *Mohd. Ahmed Khan v. Shah Bano Begum* [(1985) 2 SCC 556¹⁰], Asserting that the religious demands of maintenance cannot be maintained, the Supreme Court declared that a Muslim woman is entitled to maintenance under Section 125 of the CrPC. This progressive verdict was, however, contested politically and religiously, leading to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986, which impinged upon the rights provided under the Shah Bano ruling. The case portrays an instance where socio-political pressure interfered with the independence of the Father of Justice and the administration of gender justice.

In *Abhilasha v. Prakash* [(2020) 2 SCC 725], ¹¹the Court, in 2001, ruled that a Hindu daughter over 18 could not claim maintenance under Section 125 CrPC, except in cases of physical or mental disability. While this was legally correct, it had a disproportionate effect on the young, unmarried women who may still depend on their parents for financial support, showing how rigidly the court interpreted this decision while ignoring wider gendered economic realities.

In these cases, the manifestations of gender bias, through socio-political leverage or judicial interpretations, continue to hinder the fair access of women to maintenance.

The Influence of Education and Economic Status on Divorcing Women

The educational qualification and financial stability of a woman contribute significantly to the outcome of the divorce and maintenance litigation. Well-educated women with secured jobs are more likely to achieve favorable maintenance orders because of the assumptions made by the courts regarding their ability to be self-sufficient after divorce.

⁹ *Danial Latifi V. Union Of India* [(2001) 7 Scc 740]

¹⁰ *Mohd. Ahmed Khan V. Shah Bano Begum* [(1985) 2 Scc 556]

¹¹ *Abhilasha V. Prakash* [(2020) 2 Scc 725]

The courts can turn the case on the woman when they use her employment to justify reducing or denying maintenance, often despite her income not being anywhere close to that enjoyed during her marriage.

On the other hand, uneducated women, especially those from rural or poor backgrounds, face severe hardships in proving economic dependence. Language barriers, lack of legal awareness, and costs prevent them from effectively entering the legal system. The National Commission for Women (NCW, 2019) reports that many economically weak women face delays in maintenance claims due to procedural bottlenecks and the absence of legal awareness.

Further, courts sometimes assume that educated women can easily find employment after divorce, ignoring the real-life challenges they face—such as career breaks for marriage or child-rearing. In *Sunita Kachwaha v. Anil Kachwaha* [(2014) 16 SCC 715]¹², The Supreme Court emphasized that the mere possession of educational qualifications does not negate the right to maintenance if the woman lacks stable employment. Despite such progressive judgments, many lower courts continue to deny maintenance on the presumption that women can and should support themselves—disregarding underlying systemic issues like gender discrimination in the job market and inadequate support for childcare.

Legal protections thus become ineffective for their intended beneficiaries due to treat intersecting troubles: being a woman, being poor.¹³

The Changing Nature of Alimony: Promoting Financial Fairness in Divorce Laws

In divorce law, alimony is seen as the matrix of financial justice that provides economic support to a dependent spouse, usually the wife. In the past, it protected spouses-usually women-who may have either sacrificed their careers or financial independence for the sake of marriage. The Hindu Marriage Act of 1955 and the Special Marriage Act of 1954, along with the Muslim Women (Protection of Rights on Divorce, etc.) Act of 1986, and Section 125 of the Criminal Procedure Code, 1973 confer the right to maintenance on persons irrespective of religion or gender.

¹² SUNITA KACHWAHA V. ANIL KACHWAHA [(2014) 16 SCC 715

¹³ Lalita Dewi, “Proceedings of the International Conference on Law, Economics and Health (ICLEH)Law Protection for Post Divorced Women Through Law Enforcement with a Gender Perspective” Atlantis press , 99-220 (2020).

Courts usually look at factors such as the duration of marriage, the financial status of both parties, the lifestyle maintained during marriage, and custody of children, before determining alimonies. Heavy judiciary interventions have made a notable impact in availing post-divorce financial security to women. For example, in the case of Vinny Parmvir Parmar v. Parmvir Parmar, [(2011) 13 SCC 112], the Court observed that maintenance should be adequate to prevent a woman from falling into poverty after divorce.

While there clearly are positive readjustments, practical implementation continues to pose hurdles as there have been court delays, or refusals from the spouse ordered to pay, and, of course, inability by women to pursue further litigation because of costs. A recent trend in the judiciary seems to drift toward awards of alimony without regard to gender. Spouses now acknowledge that financial dependency can affect either spouse. An example was where courts awarded men maintenance because they were found to be economically disadvantaged and in need, a clear indication of the evolving and fluid nature of marriage and dependency.

Increasingly, therefore, courts recognize and grant gender-neutral alimony, thus evincing progressive conversion toward a balanced and fair approach to divorce law.

ENFORCEMENT OF MAINTENANCE ORDERS: BRIDGING THE GAP BETWEEN LAW AND PRACTICE

Special categories were created on service to be served, with summons regarding how property should be served and inter alia ¹⁴Statutory provisions have been made for financial security for divorced women and children. But practical hurdles pose a serious challenge to their real effectiveness. Very often, custodial spouses, predominantly women, go through insufferable delays made worse by procedural inefficiencies, allowing willful defaulter spouses to walk free without paying maintenance, supported by a feeble enforcement and support system.

Challenges in Enforcing Maintenance Orders

Cutting across countries, one of the most daunting factors that face enforcement of maintenance orders is deliberate evasion by defaulting spouses. Concealing income or transferring assets to relatives or quitting jobs, among others, are some of the tactics available to many obligors with a view to escape from the assigned obligation. The situation is, however, exacerbated in India

¹⁴ Rajnesh V. Neha (2020) Sc Online Sc 903

by the enormous unorganized labor sector where the bulk of income goes unrecorded and makes it near impossible for courts to know the accurate earnings of the individual. This situation was recognized by the Supreme Court in *Rajnesh v. Neha* (2020) wherein a direction for mandatory filing of financial disclosure affidavits was made to ensure clarity in maintenance proceedings. Despite such guidelines, however, non-disclosure and financial manipulation are very common.

Procedural inefficiencies of the judicial system also delay execution of maintenance orders to a large extent. For example, an order in favor of a person under Section 125 of the CrPC gets executed within months, often years, because of overburdening of courts and bottlenecks in administration, despite a successful order under the CrPC. The summons is either delayed or evaded altogether by defaulting parties.

In *Bhuwan Mohan Singh v. Meena* (2015) 6 SCC 353¹⁵, the observation made by the Supreme Court quite rightly states that maintenance is a right and not a matter of charity, and that delays in payment would defeat the very purpose of the law. Added to these problems are ignorance of the law and inadequate legal representation. Most women, particularly from the economically weaker sections, are not aware of their legal rights or cannot afford to hire a lawyer.

Effectiveness of Enforcement Mechanisms

The statutory instruments given to enforce orders of maintenance in India include the salary attachment and civil imprisonment. According to Section 128 in CrPC¹⁶, That is, where the order is to be given for the deduction of amounts for maintenance from salary by the court, such provision will hardly be effective in cases where such maintenance obligor is self-employed or works in the informal sector. Civil imprisonment is another remedy under Section 125(3) of CrPC¹⁷, that is, where the order is to be given for the deduction of amounts for maintenance from salary by the court, such provision will hardly be effective in cases where such maintenance obligor is self-employed or works in the informal sector.¹⁸

Where a willful noncompliance has occurred, contempt proceedings are possible according to

¹⁵ *Bhuwan Mohan Singh V. Meena* (2015) 6 Scc 353

¹⁶ Code of Criminal Procedure (1973), s. 128

¹⁷ Code of Criminal Procedure (1973), s. 125(3)

¹⁸ Law Commission of India, “252 Report on (2015)

the provisions under the Contempt of Courts Act, 1971. However, proceedings for contempt are rare due to the high burden of proving a contempt charge placed on the plaintiff, the court, and the procedural rules involved. Many a time women would not institute contempt proceedings for the sheer amount of time the litigation drags on and stress that it causes them.

Comparative Practices and Role of Technology

Like other countries, India offers more effective systems. The Child Maintenance Service in the UK, for example, automatically deducts and pays child support. The OCSE in the USA allows civil enforcement through wage withholding and database monitoring to ensure compliance.

India can model itself after such systems. Direct credit to bank accounts, linking Aadhaar with bank accounts for transfer of maintenance payments, can eliminate middlemen. Digital portals can then track, notify defaulters, and keep real-time updated data with courts.

The mobile and web-based platforms in Canada and Australia assist custodial parents with making payments and filing grievances. These functionalities could be added to the e-Courts project in India.

However, the barriers to implementation remain. Digital illiteracy, particularly among rural women, and limited internet access coupled with some judges' reluctance to adapt to new technologies often act together as hurdles to an even larger implementation. Implementation of an inclusive yet tech-friendly enforcement system demands a joint effort from the judiciary, the government, and technologists.

Lived Realities: Women, Divorce, and Legal Enforcement

Divorce, for many women worldwide, is assiduously fought not only within the legal confines but more so for survival, and this earnestly defines their dignity. They can seldom get by without any financial independence in the post-divorce world, as most of them are housewives or perhaps work part-time. Though the laws recognize the entitlements for maintenance under the Hindu Marriage Act (1955), the Special Marriage Act (1954), the Muslim Women (Protection of Rights on Divorce) Act (1986), and Section 125 of the CrPC, the rights become a reality only after an ordeal marked by delays, insensitivity, and inefficiencies. The Protection of Women from Domestic Violence Act (2005), however, extended the definition of

maintenance to include financial support upon protection orders. Yet, women continue to suffer from the stigma, procedural hurdles, and inadequate interim relief that make the journey through law a painful one.

International law also professes the necessity of economic justice for divorced women. Article 16 of CEDAW is certain about equality in marriage and divorce, particularly with respect to financial support. Principles like those declared in CEDAW are reiterated in the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). The interpretative stance adopted by the Indian courts has shown a progressive illumination concerning maintenance laws; however, there lies a wide gap between the judgment and enforcement. Alignment of the Indian domestic laws corresponding to international standards and strengthening of the institutional mechanisms are urgently required for women getting access to such maintenance, which is their rightful due.

CONCLUSION

The obstacles presented by the divorce and maintenance proceedings make it imperative to protect women and children forcefully, which in turn provides the possibility of justice and equality to be formulated in terms of gender within the family law framework. The interests of women and children may be protected in law, if not always protected in practice; systemic deficiencies do contribute to the erosion of these intercessions. The problems include frustrations caused by long delays in enforcement, procedural bottlenecks on legal action and lack of awareness of existing legal protections. These inadequacies do create a gap between the law and real access to justice. To bridge these divides, maintenance orders must be enforced without delay; reforms to strengthen existing law must come forth; while the judiciary must adopt a progressive stance whereby economic contribution to the household by women will be recognized and protected. Judicial activism has made a significant contribution to the provision of financial safeguards for women, allowing them to gain post-divorce financial independence; however, this alone cannot do much to effect any substantive change. Meridian institutional support and legislative change ultimately followed by the time when legal rights offer protection without burdening the parties involved becomes possible.

SUGGESTIONS

To enhance the effectiveness of male versus female and children concerning divorce and maintenance, policy and procedural suggestions, following are offered:

- **Force Maintenance Order in a Time-bound Manner**

Implementing a stringently imposed timeline, as recommended in the 252nd Report of the Law Commission of India, is of extreme importance. Delays in the adjudication and enforcement of maintenance cause much uncalled-for financial strife to be borne by dependent spouses and children.

- **Financial Disclosure System Must be Mandatory**

To ensure compliance by non-custodial parents, financial transparency must be made institutional. The Supreme Court, in *Rajnish vs. Neha* (2020), laid down guidelines on income disclosures, but these have lost their impact due to lack of consistent implementation.

- **Strengthening Access to Legal Literacy and Aid Services**

Legal awareness is a major hindrance to women, mostly those who are economically disadvantaged. Increased availability of legal aid, coupled with appropriately targeted awareness campaigns, will help women to effectively assert their maintenance rights.

- **Encouraging Alternative Dispute Resolution**

Exits: mediation and conciliation should come to be used more- effectively in the family law system to expedite resolution of matters and to reduce the agony and cost of prolonged litigation.

- **Facilitating Cross-border Enforcement of Maintenance**

Alternatives to amend international maintenance claims to facilitate enforcement in cross-jurisdictions must be on the agenda of India. It is high time India considered ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. The chances of securing another international enforcement mechanism will, without a doubt, considerably augment India's capability in relation to jurisdictional enforcement order.