

Rajnesh v. Neha: A Case Analysis on Determining the Quantum of Maintenance from a Socio-Legal & Psychological Frame of Reference.

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Abstract

Based on the foundation of *smritikaras*, it is decidedly believed that even death cannot part souls that have married each other. As per the Hindu Law, marriage is a sacred tie which strengthens the relationship between a man and a woman for procreating children and ascertaining a healthy social life. However, for every rule there is an exception and therefore, the law provides a standard procedure for judicial dissolution of the marital union between the husband and wife. Divorce is an extremely sensitive subject in India which is followed by maintenance, custody of the children and other facets attached to it. The remedies which have been enumerated under the law of maintenance governed by Section 125 Cr.P.C. are succinct in nature and are generally left to the discretion of the Learned Family Court for their disposal in matters related to awarding maintenance.

The present research includes, an exhaustive study on the law of maintenance pertaining to educated and qualified wives who are efficient and capable of having a decent lifestyle. The paper further endeavors to look into the special legislation, Hindu Adoption and Maintenance Act, 1956 (HAMA).³ Further, the researcher has discussed the gaps accomplished by HAMA at the forefront to preclude vagrancy and destitution in Hindu wives. The paper attempts to draw a correspondence in the analogy of the Hon'ble Apex Court in analyzing the case of *Rajnesh v. Neha*⁴ which has downrightly facilitated in the changing dynamics of law of maintenance of financially sound wives.

Keywords- HMA, marriage, divorce, maintenance, educated and qualified wife, HAMA.

I. INTRODUCTION

*"In marriage, so long as love persists, there is little need of law to rule the relations of husband and wife- but the solicitor comes in through the door as love flies out of the window"*⁵

Marriages in India are considered to be the most prominent part of people's life. For Hindus, marriage is not limited to just two people but it is truly believed to be a sacrosanct union of two families who come together to get their children married. Similarly, when the primary purpose of the marriage fails or if the marriage doesn't work out and the couple decides to separate, it becomes an exceedingly sensitive issue between the two families.

It is regardless to emphasize that the principle of maintenance is undeniably an integral part of every Hindu joint family setup which is casted upon the *Hindu Karta*. The law pertaining to maintenance talks about three essential obligations of the *Karta*, i.e., *first*, to maintain personal relations, *second* to maintain the dependants in the family and *third*, to maintain other members of the joint family.⁶ Likewise the Code of Criminal Procedure, 1973, chapter IX postulates maintenance of certain near relations like child or children, parents if any and wife in summary proceedings. This paper lays emphasis on the position of maintenance law strictly adhering to educated and qualified wife in cases of divorce under the HMA.

The word 'maintain' has been derived from a French term 'maintenir' which denotes shelter, protection and to upkeep a person who is dependent on the other. The meaning of maintenance generally comprehends supply of necessities of life and livelihood and is largely associated with the financial support extended to the wife who is unable to maintain herself after the legal dissolution of marriage. On the contrary, there is a massive uproar over maintenance claimed by women who are educated, qualified and perhaps capable enough to maintain themselves. The present research study emphasizes only on the maintenance of the women who fall in the bracket, abovementioned.

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3 Hindu Adoption & maintenance Act 1956, No. 78, Acts of Parliament, 1956 (India).

4 (2021) 2 SCC 324

⁵ Paton, jurisprudence.

⁶ CHAPTER XIX, PAGE 445, Modern Hindu Law, Dr. Paras Diwan.

It is true that full participation of both men and women in the 21st century have absolutely aided in happy and fulfilling lives. *Moreso*, the liberation and autonomy of majority of Indian women have eliminated the scope of inequalities and the magnitude that followed emancipation of women, made people believe that the status of women have enormously enhanced, therefore, it is believed that women are potential enough to sustain themselves. In comparison to what we were a century ago we have made a colossal change in the stereotypical mindset of how Indian women were viewed as. Today, most of the women play a greater role in making life-determining decisions as they are capable of believing their actions. These women are skilled, knowledgeable, educated and above all, empowered. Therefore, most of the news articles also have their headlines as “*Independent women are responsible for increase in divorce*”; “*why promoted women are more likely to divorce?*”; “*Divorce more likely when women are financially independent?*”; “*Indian women are breaking the stigma around separation like never before.*” Etc. However, time and again, the Hon’ble Supreme Court and other High Courts have observed that merely because a woman is capable of earning money does not mean that the amount of maintenance awarded by the Ld. Family Courts can be reduced.⁷ In the case of *Manav Minocha*⁸, the counsel for the husband vehemently argued that the respondent wife was not entitled for maintenance as she was qualified. *Per contra*, the Learned District Court of Delhi had set aside his argument stating that it is a well settled law that merely being qualified and educated does not disentitle the respondent wife from seeking maintenance from the husband. In the another case, the Hon’ble Supreme Court of India specified that the wife who is capable of earning and the wife who is actually earning are two different things and merely because a wife is competent enough to earn does not mean that the maintenance amount will be reduced.⁹ It is believed that when a man knowingly marries a woman who is accustomed to a certain style of living, he voluntarily undertakes the responsibility to maintain her in that style only.¹⁰ It is essential to note that the right of a Hindu wife to seek maintenance under HAMA is by the very virtue of her status of matrimony. Thus, the underlying principle of Section 125, Cr. P.C., 1973 is enforceable irrespective of all the personal laws by which the persons in India are governed unless wife marries again.

II. SUMMARY OF STATUTORY PROVISIONS RELATED TO MAINTAINANCE UNDER DIFFERENT ENACTMENTS

There are number of legislations which have been framed only to focus upon the rising concern related to maintenance. Some of these legislations are namely, the “Special Marriage Act 1954” which is also called the (“SMA”); followed by Section 125 of the Cr.P.C. 1973; The Hindu Marriage Act, 1955; Hindu Adoption & Maintenance Act, 1956; and the Protection of Women from Domestic Violence Act, 2005 (“*D.V. Act*”).

A. The Special Marriage Act 1954 (“SMA”)¹¹

The SMA talks about two kinds of maintenance, first being the Alimony *pendente lite* and the other being Permanent alimony. Section 35 of the SMA provides that the wife is eligible/ qualified to claim alimony *awaiting the litigation* in cases where she has no other source to maintain herself. Section 37 of the SMA provides for consolidated alimony by the husband which is given to the wife, once the decree has been passed through which she can maintain her whole life.

Read as:

36 “Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as, having regard to the husband’s income, it may seem to the court to be reasonable.

Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband.”

7 Shailja & Anr. v Khobbanna

8 Manav Minocha vs Nishtha @ Deeksha on 22 July, 2016

9 Shailja v. Khobbanna

10 Prem Pratap singh v. jagat Pratap kunwari, (1994) All 118

¹¹ The Special Marriage Act 1954, S 35, No. 43, Acts of Parliament, 1954 (India).

37 “(1) Any court practicing jurisdiction under Chapters V or VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support if necessary, by a charge on the husband’s property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband’s property and ability, the conduct of the parties and other circumstances of the case, as it may seem to the court to be just.

(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the district court is satisfied that the wife in whose favour an order has been made under this Section has remarried or is not leading a chaste life, it may, at the instance of the husband, vary, modify or rescind any such order and in such manner as the court may deem just.”

B. Section No. 125 of the Code of Criminal Procedure, 1973¹²

Any person irrespective of the religious community and caste to which they belong can claim maintenance under this provision. Chapter IX of the code talks about the law of maintenance with respect to the parents, children and wife in the summary proceedings. Generally, there are two grounds that revolve around the aforesaid section. They are:

- i. That the husband must have adequate means,
- ii. However, he refuses and neglects to provide a part of his means to maintain his wife.

Note that section 125 is summary in nature and in grounds referred above. In most of the proceedings, the husband is generally in command of the Magistrate directed to pay a certain amount of maintenance on the grounds of his financial capacity. The intention of Section 125 is to achieve social welfare for women in order to provide her with adequate food, clothing and shelter. In short if a wife has been treated as wife during the course of investigation

C. The Hindu Marriage Act, 1955

Considering the legislative intent behind the very inception of S.24 under the HMA, the ability of either spouse to seek maintenance pendente lite can depend on the laws of the specific jurisdiction and the circumstances of the case. Keeping the aforementioned in mind, if the spouse has no autonomous or independent source of income to keep up with themselves. Thus, the spouse who is intending to seek maintenance should prove to the court that he or she fails to procure and uphold his or her family due to any mental or a physical disability.

D. Hindu Adoption & Maintenance Act, 1956¹³

Section 23 under the HAMA offers statutory guidelines on the basis for establishing maintenance amount. Subsection 2 of S. 23 under the HAMA outlines the below mentioned considerations for assessment: (i) The status and standing of the parties involved, (ii) The legitimate needs of the applicant, (iii) The rationale behind the applicant’s separate living arrangements, (iv) The claimant’s income or any additional revenue sources.

The Domestic Violence Act, 2005 (“D.V. Act”).¹⁴

The D.V. Act recognizes the necessity for a comprehensive and integrated approach to tackling domestic violence, involving various stakeholders such as the police, the judiciary, and *mahila* or women helpline services. The D.V. Act plays a crucial

and a vital role in promoting the rights and well-being of women in general and specially those who are the victims of domestic violence in India. The Protection of Women from Domestic Violence Act, 2005, commonly known as the D.V. Act, is an important piece of legislation in India aimed at addressing and preventing domestic violence against women. This

¹² The Code of Criminal Procedure 1973, S 125, No. 2, Acts of Parliament, 1974 (India)

¹³ HAMA, *supra* note 2.

¹⁴ Protection of Women from Domestic Violence Act 2005, No. 45, Acts of Parliament, 2005 (India).

Act provides a legal framework for the protection of women from physical, emotional, verbal, economic, and sexual abuse within the domestic sphere. Key provisions of this act majorly are: Protection Orders, Residence Orders, Monetary Relief, Custody Orders, Violation of Protection Orders, Appointment of Protection Officers, Counselling and Support Services for women in distress.

III. RAJNESH V NEHA: A BRIEF OUTLINE

The Hon'ble Supreme Court of India in Criminal Appeal bearing no. 370/2020, arising out of SLP (CrL.) No. 9503 of 2018, *Rajnish v. Neha*, established significant directives which, among other things, encompass the criteria for determining the maintenance amount. The Hon'ble Apex Court observed that the husband had provided evidence indicating his unemployment and inability to meet the financial needs of his wife i.e. the Respondent No.1. He had also made it lucidly clear that he did not possess any real or movable assets and maintained only one active bank account in his name. Consequently, the husband asserted his inability to provide further maintenance to his wife. The Apex Court also criticized the Learned Family Court for backing its decision by an outdated Income Tax Return from 2006 while assessing the maintenance due in 2013. Additionally, the husband expressed his intention to pursue new business ventures to improve his financial situation and support his family.

The researchers have attempted to describe the timeline of the orders and directions passed by the learned courts in this present case in the form of a tabular chart which has been mentioned below:-

Fig 1.1 - Timeline of the Orders passed by the learned Courts

S.No	Action Taken	Before the Court of	Year of Filing	Year of Order	Order
	Application filed by respondent wife and minor son (For Interim Maintenance)	Learned Family Court, Nagpur.	2013	24.8.2015	Awarded an interim maintenance of Rupees 20,000 from the year 2013-2015 and 10,000 per month from the year 2015 onwards.
	Criminal Writ Petition by the appellant-husband challenging the orders of the Ld. Family Court, Nagpur	Hon'ble High Court of Bombay, Nagpur Bench.	2015	14.08.2018	WP (Cr) dismissed and the Hon'ble High Court affirmed the judgement passed by the Ld. Family Court. The appellant husband was instructed to provide Income Tax Returns and Assessment Orders dating from the fiscal year 2005-2006 to the present.
	In furtherance of the Criminal Writ petition, vide order dated 14.08.2018 passed by the Hon'ble High Court.	Hon'ble High Court of Bombay, Nagpur Bench.	--	11.09.2019	The husband was directed to pay the pending amount towards interim maintenance and as well as a sum of INR 3,00,000 Rupees must be deposited.
	In furtherance of the Criminal Writ petition, vide order dated 14.08.2018 passed by the Hon'ble High Court.	Hon'ble High Court of Bombay, Nagpur Bench.	--	14.10.2019	It was observed that only a portion of the outstanding arrears had been settled, and the Appellant-husband was

					granted a final chance to clear the remaining balance by November 30, 2019. Failure to comply would result in the Court taking action under the Contempt of Courts Act due to deliberate non-compliance with the Court's orders.
	MEDIATION FAILED	Learned Family Court, Nagpur.	2013	08.10.2020	--
	This current appeal seeks to challenge the Order issued on August 14, 2018.	Hon'ble Supreme Court of India in New Delhi.	2019	04.11.2022	A detailed analysis has been dealt in this research paper at serial no. 5 bearing heading- Rajnesh v. Neha (An Insight)

As per the abovementioned tabular chart, a brief analysis of the case suggests that the respondent wife left her matrimonial house in January 2013 and shortly after the birth of her son in **September 2013**, following which an application seeking an interim maintenance u/s 125 Cr.P.C was filed by her standards for. The Learned Family Court granted her a retrospective interim maintenance on a monthly basis in **August 2015**, stating that the wife is entitled for INR 15,000 and the minor son is entitled to INR 5,000 per month, respectively starting from September 2013 to August 2015. Followed by an interim maintenance of INR 10,000 per month after the commencement of **September in 2015**. Aggrieved by the same, the appellant-husband challenged the said order which was passed by the Learned Family Court in 2015 before the Hon'ble High Court of Bombay *vide* Criminal Writ Petition and the same was dismissed in the year **2018**. The arrears for the same were around 2,00,000 rupees towards interim maintenance and further INR 3,00,000 should also be deposited in lieu of the directions passed by the Learned Family Court in the year 2015. The appellant-husband partially complied to the said orders and made a part payment of the decided amount on 14.10.2019. The final opportunity to pay the complete amount was given till 30.11.2019. In furtherance if the appellant-husband fails to comply with the orders the court shall proceed with Contempt of Courts Act.

On 04.08.22, the appellant-husband submitted a compliance affidavit stating that the said appellant has made a payment of INR 1,45,000 Rupees in the month of January and no further payments were made with regards to the amount costing him INR 10,000 Rupees per month. In furtherance to this, an order was passed on 25.08.2022 specifically ordering the said appellant husband to pay the pending amount of INR 5,00,000 Rupees and 50% of the said amount must be paid within a time frame of 4 weeks.¹⁵

IV. RAJNESH V NEHA: AN INSIGHT INTO DETERMINING THE QUANTUM OF MAINTENANCE AND DISCLOSURE AFFIDAVIT

"A woman feels as keenly, thinks as clearly, as a man. She in her sphere does work as useful as man does in his. She has as much right to her freedom-to develop her personality to the full-as a man. When she marries, she does not become

the husband's servant but his equal partner. If his work is more important in life of the community, her's is more important in the life of the family. Neither can do without the other. Neither is above the other or under the other. They are equals" ¹⁶

The inception and progression of marriage and procreation from primitive to modern society has been subjects of eternal discourses among the various social-scientists and quite a few theories regarding these establishments have been postulated by them from time to time and the same establishments have been identified and highlighted as diametrically opposite

¹⁵ Rajnesh, *supra* note 3.

¹⁶ L. Denning, The due process of Law, 194-195(1981)

characteristics depending upon the role they have played in the societal revolution.¹⁷ Despite strengthening the concrete legislation and legislative attempts in order to eradicate gender discrimination, many areas of unequal and prejudicial treatments to women by the personal laws have been left unaltered. However, the present case of *Rajnesh v Neha*¹⁸ sets forth six broad guidelines among which determining the quantum of maintenance is inclusive of granting interim / permanent alimony which also ensures that the dependant spouse is neither reduced to destitution or vagrancy on account of the failure of the marriage, and nor the other spouse faces this law as a mode of punishment. In continuation of the brief facts discussed in serial no. IV, it is important to highlight that disgruntled by the orders passed the appellant-husband preferred an appeal before the Hon'ble Supreme Court of India stating that there has been a massive violation of the principles of Natural Justice including fairness and equity by the aforesaid courts.

The appellant-husband officially declared his lack of income, citing his unemployment as the reason, thus asserting his inability to afford a significant sum for the retrospective maintenance of his wife and son. While maintenance typically covers essential living expenses, it's not the sole means for the claimant's sustenance. Nevertheless, it's crucial to consider both parties' positions and the lifestyle they maintained during the marriage when determining the maintenance. In the current case, a division bench of the Hon'ble Supreme Court, consisting of Justice Indu Malhotra and Justice Subhash Reddy JJ, established six comprehensive directives for regulating maintenance payments in matrimonial cases on November 4th, 2020, in the matter of *Rajnesh v Neha*. Furthermore, to ensure a streamlined maintenance process in courts in accordance with the *Rajnesh v. Neha* case, guidelines were issued under the constitutional powers of Article 136 and Article 142 of the Indian Constitution, outlining a standardized format for the Affidavit of Disclosure of Assets and Liabilities during proceedings.

Essential Ingredients in the Affidavit of Disclosure comprises of the following:

- The disclosure affidavit must be inclusive of all personal and professional details like duration of marriage for determining the permanent alimony of the spouse, nature of employment, salary per Annum, expenditures, standard of living. It shall also include the assets (movable and immovable) owned including investments made and liabilities of the Deponent.
- The disclosure affidavit must be inclusive of the list and number of family members who are dependent on the salary of the deponent.
- The disclosure affidavit must be inclusive of dependent family member's personal details as well as their medical reports, if any.
- The disclosure affidavit must be inclusive of the details of children of the deponent, including their school / tuition fee and other necessary details.
- The disclosure affidavit must be supported by documentary evidences either in oral or in written format.

The author in the present case analysis has limited the scope of study just to determine the quantum of maintenance, exclusively. The dictionary meaning of the word quantum is any of the very small increments or parcels into which many

forms of energy are subdivided.¹⁹ The dictionary meaning of maintenance is something that maintains.²⁰ In this present case, the Hon'ble Supreme Court gave six detailed facets in order to understand quantum of maintenance in these cases. These facets are described below in the form of a chart for the convenience of the readers.

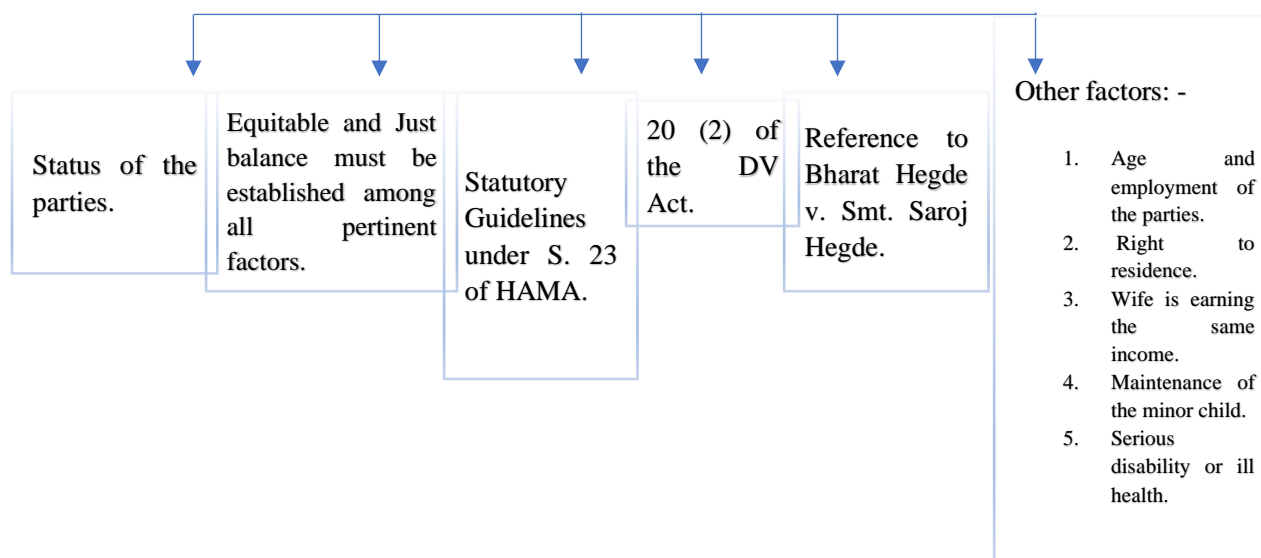
17 They have been praised as well as criticized from social structures to perform religious rituals to the most anti social organizations. According to David M Walker, 'The legal system commonly treats the family as a social institution to be preserved and supported. In many systems of different times rules have been sought to encourage family life, favoring marriage legitimate children and succession within the family'. D.M walker, The oxford Companion to Law, 451 (1980), B.M Gandhi praising the institution as 'Family is social unit, a small but the most important part of the social organization'. B.M. Gandhi, Family law Volume-I, 4 (2012). But Babel criticizing it as 'Marriage and family are the foundation of the State. Whoever therefore attacks marriage and family is attacking the society and state and undermining both. Monogamous marriage as has been sufficiently shown is the outcome of the system of gain and property that has been established by bourgeois society, and therefore undoubtedly forms one of its basic principles'. See, A. Babel, Women and Socialism, 21(2010)

¹⁸ *Supra*.

¹⁹ Merriam Webster, 1882.

²⁰ *supra*

Fig 1.2 - **Determining the Quantum of Maintenance**



1. Status of the parties

While understanding the nuances of maintenance the Hon'ble

Supreme Court *inter alia* laid down factors like status of the parties,

Reasonable needs of applicant wife and dependent children,

educational qualifications of the appellant, determining the

unfettered origin` of income of the appellant, whether the income

is sufficient to enable the applicant to maintain same standard of

lifestyle as she was accustomed to during the subsistence of the legal marriage.

The Hon'ble Court clearly brought on record that when talking about status of the

parties, financial capability of the applicant wife parents would absolutely be

immaterial and inconsequential. ²¹

2. Equitable and just balance must be established among all pertinent factors.

A meticulous examination of the aforementioned section reveals the judiciary's intent in striking a careful balance among all pertinent factors crucial for granting maintenance. This section explicitly highlights that the criterion for determining maintenance in matrimonial disputes hinges not solely on the income and financial standing of the husband but primarily on the standard of living maintained by the wife during the marriage. In this context reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Chaturbhuj v. Sita Bai*.²² The Cambridge Dictionary meaning of the terms

²¹ (2017) 15 SCC 801

²² (2008) 2 SCC 316

“reasonable” and “realistic” is usage of good judgement which is fair and practical and acceptance of things as they are according to the fact and not making decisions based on unlikely hopes for future. Thus, a critical interpretation of the two terms, “reasonable” and “realistic” clarifies that the amount of maintenance should avoid the two extremes of one scale. Marriages are a sacred tie which strengthens the relationship between a man and a woman for procreating children and ascertaining a healthy social life. However, for every rule there is an exception and therefore, the law provides a standard procedure for judicial dissolution of the marital union between the husband and wife. In India, it becomes a prerequisite to draw a just balance between the two extremes so that no judgement is deprived of reasonable and realistic parameter. According to Article 39 of the Constitution of India, the State shall direct its policies towards ensuring that all citizens, men and women alike, must have access to a sufficient means of subsistence. The aforementioned Article falls under the ambit of broader header of the Directive Principles of the State Policies also known as DPSPs. Further, in the previous paragraphs it has been already brought on record that Section 23 of HAMA states that there must be (See R V. N) Therefore, it can be concluded that neither the husband should be treated with unnecessary oppression by setting up an unrealistic maintenance amount for him nor should be the maintenance amount be so insufficient that it pushes the wife to destitution and indigence.

3. Statutory Guidelines under section 23 of the Hindu Adoption and Maintenance Act, 1956.

Sub-section (2) of Section 23 HAMA, provides five important and crucial factors for evaluating the amount of maintenance or to determine its quantum. These factors are:-

- i. Position and status of the parties.
- ii. Reasonable claims/wants of the claimant.
- iii. Justification of the petitioner/claimant if in case she is living separately.
- iv. Value of the applicant's assets and any income thereof.
- v. Income of applicant which is from his own earning.

Interpretation of Section 23 clearly sets forth that the power to decide the amount or quantum of maintenance to the wife is a clear discretion of the court based on the abovementioned factors.

4. 20 (2) of the DV Act- An Explanation

There is no straitjacket formula that determines the quantum of maintenance; it could be presumed that an able-bodied husband is capable of earning sufficient funds to cater to his wife and children, and whether the wife was educated, earning money, and could support herself is insufficient to support a claim pertaining to maintenance.²³

5. Reference to Bharat Hegde v. Smt. Saroj Hegde.

“I do not intend to catalogue the various decisions under Section 24 of the Hindu Marriage Act, 1955. It would be sufficient for me to note the judicial principles required to be applied while deciding an application under Section 24 of the Hindu Marriage Act, 1955.”²⁴

A portion in Bharat Hegde case contemplates summary inquiry and not the entire trial at length. It was discussed that right to maintenance is directly proportional and incidental to the status of the estate in matrimony. Interim maintenance has an element of alimony, which expression in its strict sense means allowance due to wife from husband on separation. It has its basis in social conditions in United Kingdoms under which a married woman was economically dependent and almost in a position of tutelage to the husband and was intended to secure justice to her. Meanwhile, considering a petition related to interim maintenance, the Court has to draw a just balance with regards, status of the parties, reasonable wants of the applicant, the income and property of the applicant. It has been observed in this case that the maintenance amount awarded cannot be punitive. In this regard what stands important is to ensure that the maintenance awarded to the applicant makes an adequate and appropriate balance. That means, the amount must be sufficient to enable the applicant to live in a similar degree of comfort as in the matrimonial home, but on the other hand, the amount must not be so exorbitant that the non-applicant.

²³ Swaneet Kukreja vs. Jaspreet Singh [Crl.Rev.P. 194/2021] On 28.02.2022.

²⁴ Pradeep Nandrajog, J. in Bharat Hegde v/s Saroj Hegde

Thus, before deciding the quantum, the jury must know the status of both the parties standing before the Learned or Hon'ble Court. Unfortunately, in India, parties do not truthfully reveal their income. Therefore, in determining interim maintenance, there cannot be mathematical exactitude and thus the Court have to take a general view.

Thus, keeping in view the above noted challenge, the judiciary follows 11 parameters which helps the bench decide to fix a quantum of maintenance. These factors are:

1. *"Status of the parties.*
2. *Reasonable wants of the claimants.*
3. *The independent income and property of the claimant.*
4. *The number of persons, the non-applicant has to maintain.*
5. *The amount should aid the applicant to live in a similar life style as he/she enjoyed in the matrimonial home.*
6. *Liabilities of the non-applicant.*
7. *Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.*
8. *Payment capacity of the non-applicant.*
9. *Guess work in estimating the income of the non-applicant.*
10. *The non-applicant to defray the cost of litigation.*
11. *The amount awarded under section 125, Cr.P.C. is adjustable against the amount awarded u/s 24 of the Act."*

6. Other Factors

The jurisprudence behind the law of maintenance is based on principles of fairness, equity, and social justice. Maintenance laws exist to provide financial support to individuals who are unable to support themselves adequately & ensuring that their basic needs are met. These laws are particularly relevant in the context of family law, especially during divorce or separation proceedings. In India, divorce and maintenance (alimony) can be influenced by various factors. Some of the key factors that may impact divorce and maintenance cases are as follows:

1. Age and employment of the parties

The length of the marriage can also play a role in determining maintenance. Longer marriages may lead to higher maintenance awards because of various circumstances. There is a higher possibility that the wife is educated and qualified yet she chose to stay close to family as a primary caregiver over career in all the years of marriage. Thus in order to undergo contemporary training to meet up the industrial standards, even an educated & well qualified wife can demand maintenance from her husband.

2. Residence Rights.

*"Section 17 of the D.V. Act provides an aggrieved woman the right to live in the "shared household". Section 2(s) determines "shared household" to consist of the household where the aggrieved woman resided at any point in time of the stage of her domestic relationship; or the household possessed and rented jointly or independently by both, or independently by either of the spouses; or a joint family house, of which the respondent is an a component."*²⁵

The concept of a shared household plays an important and significant role during the legal proceedings pertaining to either divorce, separation, property division, maintenance, or child custody. The Law in India, protects the rights and interests of individuals who share the same household, especially when they are in a domestic relationship. The definition and legal implications of a shared household can vary depending on the specific laws and regulations of each country or state. Furthermore, broadening the definition of the term "shared household," it was established that there is no legal requirement for the husband to be a part of the joint family or for the shared residence to be owned by the joint family in which either the husband or the aggrieved woman holds any right, title, or interest. The husband may neither own nor rent the shared household independently or jointly..

²⁵ *Rajnish, supra note 3, at 1*

3. Wife is earning the same income.

The law is categorical and clear on the issue of maintenance, however, there exists multiple doubts over the scope of the law of maintenance pertaining to educated, qualified and earning wives. To understand this concept better, the following points have been mentioned hereunder to bring clarity on the said issue:

Difference between “Capable of Earning” and “Actually Earning”

The Hon’ble Supreme Court time and again has held that ‘capable of earning’ and ‘actually earning’ are two separate hypothesis. Merely because the wife is capable to earn money doesn’t justifies the theory that she is presently earning which can lead to reduce the maintenance awarded to her by the court. The Hon’ble Court clearly holds a firm stance on the qualification of wife *per se* doesn’t create any barriers for the wives to seek maintenance from their husbands.²⁶ The phrases "capable of earning" and "actually earning" refer to different aspects of an individual's or entity's financial situation. "Capable of earning" implies the ability to make money in theory, regardless of whether that potential is being fully utilized or realized at the moment. For example, if someone has a high level of education and valuable skills, they are capable of earning a substantial income, even if they are not currently doing so. Thus, "capable of earning" focuses on potential and capacity, while "actually earning" pertains to the real income being generated in the present.

4. Maintenance of the minor child.

Maintenance of a minor child refers to the financial responsibility that parents or legal guardians have towards providing for the child's basic needs and well-being. This includes ensuring that the child has access to necessities such as food, clothing, shelter, education, healthcare, and other essential expenses. In many legal systems, the responsibility for providing maintenance for a minor child is typically assigned to the child's parents, regardless of whether they are married, separated, divorced, or unmarried. However, in the above noted case, it was held that education expenses of the children must be normally borne by the father.

V. POSITIVE DISCRIMINATION: AN OVERVIEW & ANALYSIS

By virtue of the very fact that women have always been subjected to a large-scale chauvinism and prejudice, the Legislation has ensured ancillary benefits to them for balancing the equilibrium of gender bias. Article 15(3) in conjunction with Article 39 of the Indian Constitution establishes a proactive role for the State in promoting advancements towards the empowerment of women, leading to the enactment of various legislations. Justice Krishna Iyer, in a judicial pronouncement, affirmed that objective of maintenance laws is: “9. *This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The*

brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts.”²⁷ Generally, laws related to maintenance have always been ratified as a cause of social and political justice in order to dispense recourses to the dependant wives for their financial assistance and their prevention from destitution and vagrancy. Therefore, Learned Courts across the country have tried to mainstream a gender perspective in the development process when we speak of laws pertaining to maintenance of Hindu wives. Ministry of Women and Child Development too, has paid special attention in encouraging new and dynamic changes in personal laws which are related to marriage, divorce, maintenance and guardianship so as to eliminate gender inequalities along with discriminations against women.²⁸ Similarly, The Constitution of India also protects the rights and interests of women and empowers the State to make positive discrimination by making laws that favours women at large. Hon’ble Justice S. Manohar, has often observed that Indian women have been deprived of their rights since centuries and thus, women should be treated as equals and their social, economic and political status must be aligned with that to men.²⁹ Based on the contention

²⁶ *Shailja vs Khobbanna*, (2018) 12 SCC 199

27 (1978) 4 SCC 70. Captain Ramesh Chander Kaushal v Mrs. Veena Kaushal & Ors.

28 Ministry of Women & Child Development, policy prescriptions and judicial legal systems.

<https://wcd.nic.in/womendevelopment/national-policy-women-empowerment>

29 (1979) S. L. J. 26 at P. 32 Charan Singh v Union of India

above, Article 15(3) of the Indian Constitution provides that : “*Nothing in this article shall prevent the State from making any special provision for women and children.*” It is interesting to note here that, the term positive discrimination is a kind of discrimination which when applied with an intention to promote equal opportunity, is considered to be an affirmative step taken by the legislation and interpreted by judiciary for upliftment of the status of weaker, backward and aggrieved section of the society which includes women. Thus even if positive discrimination is regarded as one kind of discrimination, it still plays a vital role in an attempt to uphold women’s rights and to promote fairness and equity among women in the society. Positive discrimination is also known as ‘reserve discrimination’ and ‘affirmative action’. The concept is a baby of the United States for aligning with the ‘quota’ and ‘reservation’ system in Bangladesh and India. This additional advantage refers to certain policies which consider factors like race, colour, religion, sex or national origin, etc. in order to provide benefits to an underrepresented group which had been historically excluded from far and wide.³⁰

VI. CONCLUSION

Marriages are certainly made in heaven but definitely preserved on earth. Divorce is one of the hardest decisions for any couple who had once entered a wedlock however the unending legal procedures and processes can take a mental toll on the already broken couple. Thus to ensure smoothness and fairness in the procedures, *Rajnesh v. Neha* case gave a new dimension and perspective to the law of maintenance. Through a few lenses it can be seen as a challenge for majority of people who try to conceal facts during the proceedings. *Per contra*, it is an imperative step taken by the Hon’ble Supreme Court of India to preserve the sanctity of Law of Maintenance so that no party suffers a loss and ensures that no marriage must end with matrimonial imbalance, biasness or other unfair process. Once again referring to the landmark case of *Rajnesh v. Neha*, (2021) 2 SCC 324, the Hon’ble Supreme Court has also said time and again that the condition of maintenance is always decided on the facts and pleadings of a particular case and relies upon some amount of guess work of the concerned bench of judges. The reason for this is that the parties are too smart to disclose true and correct details and try to present only scanty material to turn the case in their favour. Majority of the times, the wife shows herself as a victim and the husbands on the other hand display themselves as helpless and needy & thus have a tendency to conceal their financial details. In the light of this, the Court laid down a procedure to streamline the grant of maintenance as per *Rajnesh* and *Neha* case and the same were issued in exercise of powers under two important Articles, Article 136 and Article 142 of the Constitution of India, prescribing a uniform format of Affidavit of Disclosure of Assets and Liabilities during the maintenance proceedings before any court of India. The Quantum of maintenance thus plays an eminent role because of its proportionality with the disclosure affidavit in matrimony cases in India.

The existence of several elements is used by the court to

assess spousal maintenance:

1. Prior to the separation, both litigating parties' standard of living.
2. There is no other source of income. Before granting maintenance or alimony, the most significant issue to evaluate is whether the spouse requesting maintenance has a separate source of income or is totally reliant on his or her spouse's income.
3. Requirement that the spouse maintain the same standard of living as before the separation.
4. Skills, abilities, and educational background of the spouse to support themselves and earn a living, etc.
5. Expenses associated with raising children.

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³⁰ *Journal of The Indian Law Institute*, Vol. 53, No. 3 (JULY-SEPTEMBER 2011), Pp. 491-506 (16 Pages)
A Study on Positive Discrimination of Women In Laws of Bangladesh. Available at <https://www.jstor.org/stable/45148567?read-now=1&refreqid=excelsior%3A382c01197fc92d2ff7bca7d49ccdb917&seq=2>

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