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WHEN MARRIAGE ENDS, WHAT REMAINS?

Reconstructing the Legal Logic of Post-Marital Maintenance

~ By Ranjani Priya

I. ABSTRACT

In India, the breaking of a marriage does not occur in isolation; rather, it involves some fundamental issues of economic justice, dependency, and legal accountability. The provision of post-marital maintenance or alimony is the primary legal means by which the economic repercussions of divorce can be addressed. Its normative bases are, however, often overshadowed in public debate. Patriarchal perspectives usually view maintenance as a device of exploitation and economic blackmail on men, whereas the counter-perspective is more concerned about the problems faced by women without considering doctrine.

This paper contends that such an ideological perspective distorts the legal nature of maintenance. Indian family law, through provisions in the Hindu Marriage Act, 1955, Section 125 of the Criminal Procedure Code (Section 144 of BNSS), and judicial decision-making, views maintenance basically as a corrective measure aimed at addressing economic disadvantage resulting from marriage.

Through an analysis of doctrinal development from the need-driven approach of subsistence to the more sophisticated and equitable system, the paper highlights how the consideration of contributions, capacity, and dignity has become an increasingly significant feature of courts' rulings in post-marital maintenance cases, such as in *Rajnesh v. Neha* (2020). The paper argues that post-marital maintenance should be seen as neither a punitive nor a gendered right but rather as compensation for correcting economic imbalances brought about by marriage.

II. INTRODUCTION

Few legal principles are as morally troubling as those governing alimony.¹ The discussion about it takes place in courtrooms using the language of figures, laws, affidavits, and precedent, but underneath it all is something fundamentally human: the end of a partnership and the struggle of the law to quantify the cost of sacrifice sustained by the women within the relationship. With each case of alimony, there comes an implicit question that cannot be answered by any law. How can one quantify the sacrifice of years of nurturing children rather than pursuing a career? Is it possible to measure the value of emotional work? Does marriage create economic responsibility that outlasts the loss of affection, sexual intimacy, and companionship? Moreover, when does security turn into dependency, and when do recompenses turn into punishment?²

These inquiries highlight the deeper issue underlying post-marital maintenance. Alimony exceeds the scope of mere statute and judicial remedy; rather, alimony constitutes the legal system's effort to articulate in monetary terms the economic ramifications of unequal marital roles.³ Yet, that effort will always prove inherently flawed, as the court is obligated to articulate in monetary terms years of caring, sacrificed career, emotional labour, and joint economics in an ostensibly objective manner. Hence, the act of paying alimony becomes vulnerable to competing notions of morality and ideology.

As a result, two competing narratives exist with regard to alimony as an institution. One story sees alimony as a necessary means of protecting individuals from economic exposure resulting from unequal marital roles, whereby one individual sacrifices their career as a caregiver.⁴ On the other hand, there exists a story regarding alimony as an ongoing financial commitment imposed on the earner, surviving beyond the emotional and legal termination of the marriage.⁵ While both stories gain legitimacy through experience, neither story tells the entire story of the

¹ Flavia Agnes, *Family Law: Volume I – Family Laws and Constitutional Claims* (Oxford University Press 2011); Prabha Kotiswaran, 'An Ode to Altruism: How Indian Courts Value Unpaid Domestic Work' (2021) 56(36) *Economic & Political Weekly* 45–52.

² Saumya Maheshwari, 'Dependence Despite Work and Duties in Precarity: Exploring the Dilemmas of Adopting a "Domestic Work as Labour" Approach in Family Law' (2024).

³ Archana Parashar, *Women and Family Law Reform in India* (Sage Publications 1992); Flavia Agnes, *Family Law and Constitutional Claims* (OUP 2011).

⁴ Harshita Yadav and Rohit Kumar Chaubey, 'Survival to Dignity: How Maintenance Laws are Transforming Modern Indian Marriages' in *Contemporary Trends in Family Law in India* (2026).

⁵ Mithun Senthil Kumar, 'The Problem of Gender Bias in Maintenance and Alimony: A Critical Study of Indian Family Law' (2025) *Journal of Family & Adoption Law*.

institution's legal meaning. While both stories derive legitimacy from lived experience, neither captures the institution's legal purpose in its entirety.⁶

The real difficulty, therefore, lies not only in quantifying the economic consequences of marriage but also in determining the interpretive lens through which alimony is understood. Once maintenance is viewed primarily through competing ideological narratives rather than its doctrinal foundations, the legal question it seeks to answer gradually recedes into the background.

Instead of asking what economic disadvantage marriage has created and how that disadvantage ought to be remedied, public discourse increasingly asks who has benefited and who has suffered from maintenance. Consequently, alimony comes to be viewed simultaneously as an instrument of justice and of injustice, of protection and of coercion.⁷ The institution is no longer evaluated according to the principles that govern it, but according to the ideological meanings that competing narratives assign to it.

It is against this backdrop of competing ideological interpretations that the present paper situates its inquiry. This paper argues that alimony is fundamentally a compensatory legal mechanism designed to address the economic disadvantages generated within marriage, particularly those arising from unpaid domestic labour, caregiving responsibilities, and unequal participation in the labour market. Its normative purpose, however, has been progressively obscured by narratives that recast maintenance either as a gendered entitlement or as an instrument of financial exploitation. By separating these ideological constructions from the doctrinal foundations of maintenance law, this paper seeks to reconstruct alimony as a legal response to marriage-generated economic inequality rather than as a proxy for broader debates surrounding gender politics. It does so by first examining the competing ideological narratives surrounding maintenance before analysing its feminist jurisprudential foundations and tracing the evolution of Indian judicial interpretation.

⁶ Joysri Mondal and Prithwish Ganguli, 'Reforms in Maintenance Laws: Addressing Gender Bias' (2024).

⁷ Sagnik Dutta, *'Divorce, Kinship, and Errant Wives: Islamic Feminism in India, and the Everyday Life of Divorce and Maintenance'* (2021) 21(3) European Journal of Women's Studies.

III. THE IDEOLOGICAL CONSTRUCTION OF ALIMONY: COMPETING NARRATIVES OF POST-MARITAL MAINTENANCE

Legal provision for maintenance has long existed outside the realm of family law as an issue of ideological dispute. While alimony is conceptually intended to deal with the financial ramifications of divorce, public opinion on the matter has been influenced increasingly by opposing ideologies related to gender, dependency, and justice.⁸ More than simply affecting the social perception of alimony, these ideologies may be the determinative factors of whether maintenance can be considered morally justifiable. Therefore, rather than being judged according to the relevant legal doctrines, alimony is often judged according to ideology.⁹

A. The Patriarchal Legacy: Maintenance as Continuing Male Obligation

The history of maintenance has deep roots in the patriarchal structure of the family system. In traditional family systems, there was a strict system of division of labour where the husband was the economic head and the wife was the one responsible for managing and taking care of things at home.¹⁰ It is worth noting that women had no rights of education, property, inheritance, or work outside their homes; thus, dependency on men was inevitable rather than a choice. Therefore, it became necessary for the husband to maintain his wife, not because she contributed to the economy but because of his legal and moral obligations.¹¹

Such a perception greatly impacted the development of maintenance laws. Maintenance after divorce was viewed as the continuation of the existing obligation and did not recognise any economic value generated through household work.¹² Maintenance was thus practised in a patriarchal model of care and protection, as women were seen as having the right to receive such support not due to the recognition of their economic situation by the law but because they were considered too weak to gain economic independence on their own.¹³

Despite the fact that much has changed since then, both legally and socially, this patriarchal idea has left its mark on current arguments regarding maintenance payments. Maintenance is often viewed negatively as if it were placing a permanent burden on men due to their position as breadwinners during their marriage. This negative perception is based on the exact same

⁸ Flavia Agnes, *Family Law: Volume I – Family Laws and Constitutional Claims* (Oxford University Press 2011).

⁹ Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

¹⁰ Archana Parashar, *Women and Family Law Reform in India* (SAGE Publications 1992).

¹¹ Flavia Agnes, *Law, Justice and Gender* (Oxford University Press 2012).

¹² Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (The New Press 2004).

¹³ Susan Moller Okin, *Justice, Gender, and the Family* (Basic Books 1989).

patriarchal idea that was used to justify maintenance payment itself in the first place – namely, that financial obligations are inherently gendered obligations and not the result of economic realities of marriage itself.¹⁴

B. The Contemporary Anti-Alimony Narrative: Maintenance as Financial Exploitation

In addition to the patriarchal background, another influential narrative related to maintenance today represents maintenance as a means of legalised financial exploitation. Maintenance is commonly portrayed in popular narratives as a tool for economically independent spouses – usually wives – to receive unfair financial gains from their ex-partners even when the emotional and legal connection between them is no longer valid.¹⁵ News coverage, social media discussions, and the selection of special cases demonstrate the impression that the maintenance legislation can be easily misused by earning partners.¹⁶

These narratives often focus on excessive maintenance payments, lengthy legal disputes, and abuse of matrimonial legislation during divorce procedures. The use of phrases like “cash cow,” “lifelong liability,” and “financial penalty” becomes increasingly frequent, as people believe that maintenance makes divorce an endless burden financially, instead of making it a legal issue.¹⁷ Special attention is paid to cases of abuse, representing a sign of injustice of this institution.

This issue cannot be entirely brushed aside. All legal measures can be abused, and maintenance law is not an exception.

“Problems associated with the abuse of judicial discretion, financial capacity, delays in adjudication, and problems in enforcement have been brought up regarding the handling of maintenance claims. Such issues do require an institutional examination.”¹⁸

¹⁴ Prabha Kotiswaran, 'An Ode to Altruism: How Indian Courts Value Unpaid Domestic Work' (2021) 56(36) *Economic and Political Weekly* 45–52.

¹⁵ Mithun Senthil Kumar, 'The Problem of Gender Bias in Maintenance and Alimony: A Critical Study of Indian Family Law' (2025) *Journal of Family and Adoption Law*.

¹⁶ Deborah L Rhode, *Speaking of Sex: The Denial of Gender Inequality* (Harvard University Press 1997).

¹⁷ Joysri Mondal and Prithwish Ganguli, 'Reforms in Maintenance Laws: Addressing Gender Bias and Ensuring Equality in Modern Family Law' (2024) Social Science Research Network Working Paper.

¹⁸ Law Commission of India, *252nd Report on the Right of the Hindu Wife to Maintenance* (Government of India 2015).

Nevertheless, the presence of problems with the process of administering the law does not change the underlying principle behind maintenance in any way. The majority of modern criticisms confuse the idea of abuse of the measure with its theoretical justification. Outliers become universal rules, and people believe that maintenance is inherently an abusive practice.¹⁹ As a result, public discussion takes the attention away from the very legal question that maintenance should solve, whether marriage resulted in economic disadvantage that requires adjustment after the dissolution. Instead, the idea of wealth distribution between ex-spouses is brought into the equation and turns maintenance into a symbolic fight of male disadvantage against female advantage²⁰.

C. Beyond Ideological Narratives

Although the patriarchal legacy and the contemporary anti-alimony critique appear to occupy opposing positions, both ultimately share a common analytical limitation. Both view maintenance mainly in terms of the gender relations and not the economic structure of marriage. Whether as the extension of the husband's responsibility or the tool of economic exploitation, alimony is mainly interpreted as a gender-based transfer of property.²¹ In both constructions, alimony is stripped of the economic circumstances under which it is sought.

Thus, the critical issue of doctrine is lost sight of. The legal issue that must be addressed is not whether one gender should be made to support another, but whether it is true that there were economic inequalities created by the marriage that persisted even after its termination. Once this paradigm shift has been made clear, the debate turns from conflicting ideologies to the concrete effects of caregiving, interrupted careers, reduced economic power, and invisible domestic labour.²² This is where feminist legal theory proposes a completely different view of maintenance, as compensation for the economic inequalities caused by marriage. This reconstruction is discussed in the next chapter.

¹⁹ Martha Albertson Fineman, *The Neutered Mother; the Sexual Family and Other Twentieth Century Tragedies* (Routledge 1995).

²⁰ Sagnik Dutta, 'Divorce, Kinship, and Errant Wives: Islamic Feminism in India, and the Everyday Life of Divorce and Maintenance' (2021) 28(3) *European Journal of Women's Studies* 328–343.

²¹ Joan C Williams, *Unbending Gender: Why Family and Work Conflict and What To Do About It* (Oxford University Press 2000).

²² Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (The New Press 2004); Prabha Kotiswaran, 'An Ode to Altruism: How Indian Courts Value Unpaid Domestic Work' (2021) 56(36) *Economic and Political Weekly* 45–52.

IV. RECONSTRUCTING THE LEGAL LOGIC OF ALIMONY: A FEMINIST JURISPRUDENTIAL PERSPECTIVE

Ultimately, the narratives that view alimony negatively share the following limitation: they approach the idea of maintenance on the grounds of the identities of the parties involved rather than on the basis of the economics of marriage itself. The perspective of feminist jurisprudence breaks with this tradition, focusing on how marriage creates inequalities that underpin maintenance needs. The question asked is not who needs money because of his/her gender, but whether marriage has created any economic disadvantage that survives divorce.

“Marriage is not only about people but also about their economic relationship and unequal division of labour.”²³

For many families, the husband or the wife has to take up much more responsibility for raising children, caring for them and performing other housework, which results in a lack of career development opportunities, financial independence, and earning potential. These activities keep the family going and contribute to the economic performance of the breadwinner, yet the role played by the stay-at-home parent is not appreciated economically. Therefore, marriage often reveals existing inequalities hidden in marriage.²⁴

It is this structural disadvantage that maintenance aims to rectify. In relation to feminism, maintenance is not an award for being a woman, nor is it compensation for any sort of failure on an emotional level during marriage. On the contrary, it is a compensatory law recognizing that the unpaid nature of domestic work and disruption of market-based employment creates concrete economic results.²⁵ Therefore, the goal of maintenance is not perpetuation of dependency but correction of the economic disadvantages associated with the structuring of marital roles and dignified entry into post-marital life.²⁶

This analysis is as valid in relation to the concept of substantive equality as well. Although women remain the primary users of maintenance claims because of the gendered division of labour in the domestic sphere, there is nothing in the concept of maintenance that necessarily

²³ Prabha Kotiswaran, 'An Ode to Altruism: How Indian Courts Value Unpaid Domestic Work' (2021) 56(36) Economic & Political Weekly 45.

²⁴ *Id.*

²⁵ Archana Parashar, *Women and Family Law Reform in India* (SAGE Publications 1992).

²⁶ Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (The New Press 2004).

makes it gender-specific.²⁷ The critical element of maintenance is the creation of economic disadvantage due to marriage, regardless of the sex of the person who is claiming maintenance.

Looking at it in such a way, the justification for alimony is not in the gender of the beneficiary but in its ability to redress the economic imbalance created by marriage. It is this idea that has become more prevalent in the Indian judiciary and which has caused it to change its perspective on maintenance from one of simple duty to that of economic readjustment. The development of this line of thought will be discussed in the next chapter.

V. FROM DEPENDENCY TO COMPENSATION: THE JUDICIAL EVOLUTION OF MAINTENANCE LAW

The development of maintenance jurisprudence in India can be seen as moving away from a paternalistic view of maintenance to a compensatory view of justice. While there has always been a focus on prevention of destitution by the statutes relating to maintenance, the judicial approach has increasingly realized that the economic ramifications of marriage cannot simply be reduced to a question of financial necessity.²⁸ In essence, the approach of the courts has been to align the statute with the larger goal of redressing economic inequality arising from marriage.

The statutory basis for maintenance is provided by Sections 24 and 25 of the Hindu Marriage Act, 1955 and Section 125 of the Code of Criminal Procedure, 1973 (Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023). Although differing in content and applicability, these statutory instruments seek to ensure that the end of marriage does not lead to a spouse being left without reasonable means of support. It is important to note that, neither of these statutes considers maintenance as a form of punishment for a spouse or a right of the other spouse.²⁹

In this context, judicial construction has further refined the notion. While delivering its verdict in *Mohd. Ahmed Khan v. Shah Bano Begum*³⁰, the apex court reiterated that maintenance is an exercise in social justice that aims at safeguarding the economically weak spouse from falling into penury. Later judgments like *Danial Latifi v. Union of India*³¹ have reiterated that

²⁷ Sandra Fredman, *Discrimination Law* (2nd edn, Oxford University Press 2011).

²⁸ Paras Diwan, *Modern Hindu Law* (23rd edn, Allahabad Law Agency 2022).

²⁹ Paras Diwan, *Modern Hindu Law* (23rd edn, Allahabad Law Agency 2022); Kusum, *Family Law Lectures: Family Law I* (5th edn, LexisNexis 2022).

³⁰ *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) 2 SCC 556.

³¹ *Danial Latifi v. Union of India* (2001) 7 SCC 740.

maintenance has to be construed purposefully and should aim at providing a proper and adequate financial provision and not mere subsistence. This marked the turning point of the Indian jurisprudence from merely considering maintenance as an extension of matrimonial obligation to that of economic support after divorce.

*Rajnesh v. Neha*³² was another landmark judgment wherein the Supreme Court attempted to rationalize the doctrine of maintenance through some guidelines on disclosure of financial status, calculation of quantum of maintenance, overlap between different maintenance orders and their enforcement. It is important to note that the court emphasized the fact that the calculation of maintenance could not merely be done in terms of income but should take into consideration several factors such as the living style of the couple, financial liabilities, earning capacity and contributions in the marriage.³³

It can be seen that modern maintenance jurisprudence has undergone a profound doctrinal shift. It has been accepted by courts that non-monetary work performed within the home has economic relevance, despite being monetarily unrewarding. Although maintenance still plays the role of protection in law, it is viewed in terms of an equitable adjustment of a marriage rather than gendered dependence. Therefore, the law has transcended the simplistic dichotomies prevailing in the public sphere to recognize that the validity of maintenance does not lie in the gender of the applicant but rather in the economics of the marriage.

VI. BEYOND THE GENDER WARS: RECLAIMING THE LEGAL PURPOSE OF ALIMONY

The current discourse on alimony centres on whether the payment is just for men or women. But even though these arguments are common in modern society, they are fundamentally misplaced. This line of thinking presupposes that maintenance is more about the parties themselves than about the economic consequences of marriage. The present paper contends that alimony is not an issue that can be defined by the ideology of gender and the payment for that reason or vice versa. Rather, it should be understood within the context of the legal issue.

Marriage is an economic institution alongside being an emotional affair. Where one party takes the burden of being the caregiver and leaves the labour market, the economic disadvantages

³² *Rajnesh v. Neha* (2021) 2 SCC 324.

³³ *Rajnesh v. Neha* (2021) 2 SCC 324; *Kirti v. Oriental Insurance Co. Ltd.* (2021) 2 SCC 166.

persist despite any decree of divorce. Therefore, alimony cannot be regarded as charity or compensation for the suffering. It is rather a legal recognition of the fact that marriage is an economic issue with possible imbalances to be addressed after its termination.³⁴

The development of maintenance jurisprudence in India shows just such an approach. The courts now realize that domestic labour is of economic value and that the issue of substance and equality should take into account the economic implications of marital roles assignment rather than the formal notion of equality.³⁵ This trend shows that the system of maintenance has come a long way since its patriarchal origins, yet continues to perform its protective role.

In the end, the matter is not whether maintenance helps either men or women but whether it achieves its basic goal of compensating for the economic hardship resulting from marriage. When the principle becomes central to the legal discussion, ideological issues cease to be relevant. The essence of the maintenance system is not about rewarding dependency or punishing success, but about the realization that the economic implications of marriage remain even when the marriage itself ends.

³⁴ Archana Parashar, *Women and Family Law Reform in India* (SAGE Publications 1992); Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (The New Press 2004).

³⁵ *Rajnish v. Neha* (2021) 2 SCC 324; *Kirti v. Oriental Insurance Co. Ltd.* (2021) 2 SCC 166; Prabha Kotiswaran, 'An Ode to Altruism: How Indian Courts Value Unpaid Domestic Work' (2021) 56(36) *Economic & Political Weekly* 45.