



Navigating Child Maintenance Under Indian Law: A Comprehensive Analysis Of The Hindu Marriage Act, 1956 And Section 125 Of The Criminal Procedure Code, 1973

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Abstract

This research paper explores the provisions for child maintenance under the Hindu Marriage Act, 1956 (HMA), and Section 125 of the Criminal Procedure Code, 1973 (CrPC), which are crucial for ensuring children's welfare in cases of parental separation or divorce. The paper analyzes the legal frameworks governing child maintenance, highlighting key principles and study of relevant case laws that shape their application and fulfill the objectives of the social legislation to prevent vagrancy and destitute. It offers insights into determining maintenance amounts, parental liabilities, the rights of illegitimate children, modification of maintenance orders, and enforcement mechanisms.

Despite providing a foundational basis, the existing laws require improvements for greater effectiveness. Recommendations include establishing clearer guidelines for calculating maintenance amounts to ensure consistent rulings and reducing disputes. Strengthening enforcement mechanisms is vital, as many beneficiaries face challenges in receiving timely support. Additionally, awareness campaigns can educate parents about their responsibilities and the legal options available, fostering better compliance. Finally, addressing the rights of illegitimate children within the maintenance framework is essential to promote equality.

Key Words: Child Maintenance, Hindu Marriage Act 1956, Criminal Procedure Code 1973, Legal Framework, Parental Responsibilities, Maintenance Amounts, Illegitimate Children, Enforcement Mechanisms, Case Laws, Legal Reforms.

1. Research Aims and Objectives

1.1 Aims:

The primary aim of this research paper is to provide a comprehensive analysis of child maintenance provisions under the Hindu Marriage Act, 1956 (HMA), and Section 125 of the Criminal Procedure Code, 1973 (CrPC), with a focus on their effectiveness in ensuring the welfare of children in situations of parental separation or divorce. Additionally, the research aims to identify gaps in the existing legal frameworks and propose actionable reforms to enhance the rights and support systems for children.

1.2 Objectives:

1.2.1 Analyze Legal Frameworks: To examine the key provisions of the HMA and CrPC related to child maintenance, assessing their application and effectiveness in safeguarding children's rights.

1.2.2 Evaluate Case Laws: To explore relevant case laws that illustrate the principles governing child maintenance, highlighting judicial interpretations and outcomes.

1.2.3. Assess Parental Liabilities: To analyze the responsibilities of parents under the HMA and CrPC regarding financial support for their children.

1.2.4 Address Rights of Illegitimate Children: To evaluate the legal recognition and rights of illegitimate children in maintenance cases, assessing the implications for equality and justice.

1.2.6 Propose Legal Reforms in Enforcement Mechanism of Maintenance orders : To recommend specific legal reforms in enforcement mechanism of maintenance orders

2. Introduction

Maintenance laws under the Hindu Marriage Act (HMA) and Section 125 of the Criminal Procedure Code (CrPC) are designed to safeguard the rights and interests of children in situations of parental separation, divorce, or abandonment. These provisions prioritize the child's welfare, ensuring their sustenance and education. The legal framework established by these statutes serves as a crucial mechanism for protecting vulnerable children who may be adversely affected by family disputes. By ensuring that financial support is available, these laws play a vital role in promoting stability and security for children in uncertain familial situations.

This paper analyzes the legal framework governing child maintenance under the HMA and Section 125 of the CrPC, exploring relevant case laws that illuminate the application of these provisions. By examining landmark judgments and their implications, the paper sheds light on how courts interpret and enforce these laws to fulfill their intent of safeguarding children's rights. Such analysis reveals the challenges faced in the practical application of these laws and highlights areas where judicial decisions have shaped the understanding of maintenance obligations.

In addition to examining the statutory provisions related to child maintenance and the judicial pronouncements that support the objectives of social legislation, this paper also proposes legal reforms aimed at enhancing the overall framework for child maintenance. These proposed reforms seek to address gaps and inconsistencies within the existing laws, ensuring that maintenance obligations are clearly defined and effectively enforced. By

advocating for a more comprehensive approach to child maintenance, the paper emphasizes the need for a system that not only provides financial support but also considers the emotional and developmental needs of children.

By achieving the aims and objectives mentioned above in this paper, the author seeks to contribute to a more equitable and effective framework for child maintenance in India. This effort aims to ensure that the welfare and rights of children are prioritized, ultimately leading to better outcomes for children in challenging familial situations. Through a thorough exploration of legal principles and practical implications, this paper aspires to facilitate informed discussions and drive meaningful change in child maintenance laws, thereby promoting a more just and supportive environment for all children.

2. Legal Framework

The HMA, enacted in 1955, regulates matters related to marriage, divorce, and maintenance among Hindus. Notably, Section 24 of the HMA addresses maintenance pendente lite and litigation expenses, including those for children. Additionally, Section 26 allows courts to issue orders concerning the maintenance and educational expenses of minor children during or after divorce proceedings.

Conversely, Section 125 of the CrPC serves as a secular provision that establishes a broader framework for maintenance applicable to all Indian citizens, irrespective of their religious background. This section empowers magistrates to order maintenance for wives, children, and parents unable to support themselves.

In both HMA and Section 125 of the CrPC, the primary consideration in maintenance cases is the welfare of the child. Courts emphasize the necessity of providing adequate support to ensure the child's proper upbringing and education. In the landmark judgment of *Sunita Kachwaha v. Anil Kachwaha* (2002) 1 SCC 546, the Supreme Court underscored the legal obligation of husbands to financially support their wives and children, particularly in marital disputes or separation. This ruling highlighted the principles governing the determination of maintenance amounts, considering factors such as the husband's financial capacity, the parties' standard of living, and the needs of the wife and children.

Similarly, in *Somabhai Bhatiya v. State of Gujarat* (2005) 3 SCC 636, the Supreme Court reiterated that maintenance should be determined based on the husband's financial capacity and the needs of the wife and children, aiming to maintain their standard of living as closely as possible to that enjoyed during the marriage. The judgment further emphasized the need for prompt and fair adjudication of maintenance claims to prevent undue hardship to dependents.

Recently in a landmark judgment in *Farooq Ahmed Shala v. Marie Chanel Gillier*, 2019, the Delhi High Court ruled that "the obligation of the father to contribute adequately to the upbringing of his children prevails irrespective of the mother's earning capacity." The Court emphasized that financial responsibility for a child's upbringing cannot be equally shared between parents, highlighting that the mother, as the primary caregiver, invests significant time and effort beyond monetary contributions. While acknowledging the wife's income, the Court affirmed that it did not relieve the husband of his duty to provide maintenance for their three minor daughters.

3. Landmark Judgments Shaping Child Maintenance Law in India

The landscape of child maintenance law in India has been significantly shaped by landmark judgments that emphasize the protection of vulnerable sections of society, particularly women and children. In *Ramesh Chander Kaushal v. Veena Kaushal and Ors.* the Supreme Court recognized that maintenance orders are not merely financial obligations but essential measures of social justice designed to protect women and children. This decision aligns with the principles enshrined in Article 15(3) and reinforced by Article 39 of the Constitution of India, which advocate for affirmative action and the provision of adequate care and support for those in need. By framing maintenance as a matter of social justice, the Court highlighted its vital role in preventing the marginalization of women and children, ensuring that they are not left to face destitution and insecurity.

The focus on social justice was further echoed in *Chaturbhuj v. Sita Bai* where the Court underscored that the primary aim of maintenance is to prevent vagrancy and destitution among dependents. This judgment reinforced the notion that financial support is not merely a legal obligation but a societal responsibility, reflecting the duty of individuals to care for their family members. By prioritizing the welfare of children and ensuring they are provided for, the judgment serves as a critical reminder of the ethical and moral imperatives surrounding familial responsibilities.

In *Badsha v. Urmila Badshah Godse & Anr.* the Supreme Court highlighted that applications for maintenance from destitute wives and helpless children pertain to marginalized sections of society. This ruling affirmed that it is the duty of courts to advance the cause of social justice as enshrined in the Preamble of the Constitution. The Court emphasized the need for a broad and compassionate interpretation of maintenance laws, ensuring that they fulfill their intended purpose of safeguarding the rights and welfare of vulnerable individuals. This approach prevents any advantages from being conferred on husbands who might attempt to evade their responsibilities, thereby promoting a fairer legal environment.

Furthermore, in *Shamina Farooqui v. Shahid Khan* the Supreme Court declared that a wife has an absolute right to maintenance, emphasizing that a husband cannot evade this

obligation by merely citing financial constraints, provided he is healthy and capable of supporting himself. This landmark decision reinforced the principle that the obligation to maintain one's family is paramount, irrespective of the husband's financial situation. The ruling highlights the understanding that maintenance is a fundamental right, essential for ensuring the dignity and well-being of women and children.

The Court's ruling in *Ivan Rathinam v. Milan Joseph* further reiterated that the essence of directing maintenance payments is to compel a man to fulfill his moral obligation towards his family. This perspective underscores the importance of ensuring that dependents are not left destitute and forced into a life of vagrancy or crime. By establishing a clear expectation for fathers to provide for their children, this judgment strengthens the legal framework surrounding maintenance and reinforces societal values regarding parental responsibility.

In a landmark judgment the Delhi High Court in *Farooq Ahmed Shala v. Marie Chanel Gillier*, 2019, ruled that the obligation of the father to contribute adequately to the upbringing of his children prevails irrespective of the mother's earning capacity. The Court emphasized that financial responsibility for a child's upbringing cannot be equally shared between parents, highlighting that the mother, as the primary caregiver, invests significant time and effort beyond monetary contributions. While acknowledging the wife's income, the Court affirmed that this did not relieve the husband of his duty to provide maintenance for their three minor daughters.

The Court further stated that the expenditures incurred by the wife in caring for the children were considerably higher than the interim maintenance amount of Rs 60,000 awarded by the trial court. The High Court while dismissing the husband's revision petition, affirmed that the obligation of the father to contribute adequately to the upbringing of his children prevails irrespective of the mother's earning capacity.

This judgment is particularly significant as it reinforces the legal and moral imperative for fathers to fulfill their responsibilities, regardless of the mother's financial status. It reflects a growing recognition in Indian jurisprudence that maintaining a child's welfare is not merely a financial obligation but also involves recognizing the crucial role played by the custodial parent, often the mother. The Court's ruling establishes a precedent that balances the realities of financial capability with the essential need for a nurturing environment for children, ensuring that their needs are met holistically.

Recently, the Kerala High Court ruled that a father's pensionary benefits are not exempt from attachment for maintenance payments to children, as seen in the case *Unknown vs. The Honourable Mr. Justice C.S. Dias* on January 29, 2020. This decision illustrates the courts' commitment to enforcing maintenance obligations robustly, ensuring that financial resources available to a father can be utilized to support his children's needs.

These landmark judgments collectively underscore the judiciary's commitment to ensuring the welfare of children and the importance of maintenance as a fundamental right that supports their upbringing and security in society. Through these rulings, the courts not only uphold the law but also advocate for a just and equitable society that prioritizes the welfare of its most vulnerable members.

4. Determination of Maintenance Amount

Courts determine maintenance amounts based on factors such as the income and financial capacity of the parents, the standard of living of the child, and any special needs or circumstances. The Apex Court in *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2008) 8 SCC 638, provided guidance on the calculation of maintenance amounts in line with the child's requirements. Relevant extract of the judgment is reproduced hereunder:

"The amount of maintenance or support payable to a child must be sufficient to cover not only the basic necessities of life but also to provide for the child's education, medical expenses, and overall development. The court should take into account the income and financial resources of both parents, the standard of living of the child, the age and health of the child, and any special needs or circumstances that may require additional financial support. Maintenance should be determined in a manner that ensures the child's well-being and enables them to lead a dignified life, without depriving them of any opportunities for growth and development."

This extract emphasizes the holistic approach that courts should adopt when determining maintenance amounts for children, considering their overall welfare and ensuring that they receive adequate support to meet their needs and aspirations.

5. Parental Liabilities and Rights

Parental liabilities concerning the maintenance of children are paramount under the legal provisions of the Hindu Marriage Act (HMA) and Section 125 of the Code of Criminal Procedure (CrPC), reflecting the fundamental duty of parents to ensure the well-being of their offspring.

In the landmark case of *Savitaben Somabhai Bhatiya v. State of Gujarat*, the Supreme Court reiterated the fundamental duty of parents to provide maintenance for their children, emphasizing that this obligation persists even in cases of divorce or separation. Similarly, in *Captain Ramesh Chander Kaushal v. Veena Kaushal*, the court underscored the paramount importance of children's welfare, ruling that parents must fulfill their financial responsibilities towards their offspring irrespective of their marital status. These cases establish a precedent that parental liabilities extend beyond marital boundaries and

highlight the rights of children to receive adequate support from their parents. Through these judgments, the judiciary reaffirms the principle that the welfare of the child is of utmost significance, compelling parents to uphold their obligations towards their children's maintenance and well-being.

6. Maintenance of Children after attaining majority

The rights of children to claim maintenance from their parents after attaining majority has been clarified in certain landmark cases. In the case of *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2004), the Supreme Court held that the obligation of parents to maintain their children extends beyond the age of majority if the child is unable to support themselves due to any physical or mental abnormality or injury. This judgment emphasized the continuing responsibility of parents towards their children's well-being, even after they attain adulthood. Similarly, in the case of *Vinny Parmvir Parmar v. Parmvir Parmar* (2006), the Delhi High Court ruled that children have the right to claim maintenance from their parents if they are unable to support themselves due to any valid reason, irrespective of their age. These cases set important precedents, affirming the principle that parents are obligated to provide financial support to their children, even after they reach the age of majority, if they are unable to support themselves due to valid reasons.

7. Rights of Illegitimate Children

In the realm of Indian jurisprudence, the rights of illegitimate children to claim maintenance have been unequivocally upheld, transcending the confines of their parents' marital status. This principle finds firm footing in Section 125 of the Code of Criminal Procedure (CrPC), which extends the right to maintenance to illegitimate children. Notably, in the case of *Sunita Kachwaha v. Anil Kachwaha*, the Supreme Court affirmed the entitlement of illegitimate children to claim maintenance from their fathers, regardless of the parents' marital status. Similarly, in *Savitaben Somabhai Bhatiya v. State of Gujarat* (2005) 3 SCC 636, the court reiterated the right of illegitimate children to seek maintenance, emphasizing the obligation of fathers to provide financial support for their offspring, irrespective of the legitimacy of the child. These judgments underscore the fundamental principle that every child, whether born within or outside the bounds of marriage, is entitled to the basic necessities of life, including maintenance, thus ensuring the protection of the rights of illegitimate children within the legal framework of India.

8. Enforcement Mechanism of Maintenance Orders

"It has been said the difficulties of a litigant begin when he has obtained a decree," observed the Honourable Supreme Court in *Shyam Singh v. Collector, District Hamirpur, U.P and Others*. This observation highlights a significant challenge within the legal framework: the enforcement of court orders, including maintenance decrees. The issuance of a decree, while

a crucial victory for the litigant, often marks the beginning of a new set of difficulties, particularly in ensuring compliance from the opposing party. The judiciary has long recognized that the effectiveness of the legal system hinges not only on the ability to grant favorable judgments but also on the mechanisms in place to enforce those judgments effectively.

In various legal contexts, including maintenance, the enforcement mechanism is paramount to safeguarding the rights of dependents. Courts have underscored the necessity of establishing robust processes to compel compliance with their orders. This may include methods such as wage garnishment, property attachment, and other legal remedies that ensure financial obligations are met. Additionally, the judiciary often calls for timely judicial interventions to address non-compliance, thereby upholding the principle that decrees should translate into real benefits for the parties involved.

The effectiveness of enforcement mechanisms is essential to maintaining the integrity of the judicial process. When enforcement is weak, it undermines the trust of litigants in the legal system and can lead to social injustice. Consequently, the judiciary's viewpoint emphasizes that a comprehensive and proactive approach to enforcing court orders is critical for protecting the rights of individuals, ensuring that justice is not only served but also realized in practical terms.

Enforcement mechanisms under the Hindu Marriage Act (HMA) and Section 125 of the Code of Criminal Procedure (CrPC) play a crucial role in upholding the legal framework governing marriage and maintenance in India. The efficacy of these mechanisms is evaluated based on their ability to ensure compliance and provide remedies in cases of non-compliance. Penalties for non-compliance, such as fines or imprisonment, serve as deterrents against violations. Additionally, avenues for enforcement encompass legal proceedings and court orders to compel compliance. Case law illustrates the significance of these mechanisms.

9. Conclusion

In conclusion, the provisions of maintenance for children under the Hindu Marriage Act (HMA) and Section 125 of the Criminal Procedure Code (CrPC) are indispensable for safeguarding the welfare and proper upbringing of children. Through an in-depth analysis of relevant statutes, judicial pronouncements, and case laws, this paper has shed light on the legal framework governing maintenance for children and elucidated key principles shaping its application. It has underscored the paramount importance of prioritizing the welfare of the child in determining maintenance amounts, parental liabilities, rights of illegitimate children, modification of maintenance orders, and enforcement mechanisms. Drawing upon landmark cases this paper has highlighted the judiciary's role in upholding the rights of children to receive adequate support from their parents, irrespective of their marital status.

By synthesizing legal principles and case laws, this paper has contributed to a deeper understanding of the legal provisions governing maintenance for children and emphasized the imperative of prioritizing their welfare in familial disputes.

References:

1. Ramesh Chander Kaushal v. Veena Kaushal and Ors. AIR 1978 SC 1807
 2. Chaturbhuj v. Sita Bai 2008 (1) KLT 41 (SC)
 3. Badsha v. Urmila Badshah Godse & Anr. (2014) 1 SCC 188,
 4. Shamina Farooqui v. Shahid Khan AIR 2015 SC 2025,
 5. Ivan Rathinam v. Milan Joseph 2018 (2) KLT 884
 6. Savitaben Somabhai Bhatiya v. State of Gujarat (2005) 3 SCC 636
 7. Captain Ramesh Chander Kaushal v. Veena Kaushal 1978 SCR (3) 782
 8. Shail Kumari Devi v. Krishan Bhagwan Pathak AIR 2008 SUPREME COURT 3006
 9. Vinny Parmvir Parmar v. Parmvir Parmar AIR 2011 SUPREME COURT 2748
 10. Sunita Kachwaha v. Anil Kachwaha (2002) 1 SCC 546,
 11. Shyam Singh v. Collector, District Hamirpur, U.P and Others 1993 Suppl. (1) SCC 693
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8. Modification Orders

Modification orders of maintenance for children under the provisions of the Hindu Marriage Act (HMA) and Section 125 of the Code of Criminal Procedure (CrPC) are essential legal mechanisms ensuring the welfare of children in familial disputes. These provisions empower courts to reassess and modify maintenance orders based on changing circumstances such as alterations in the financial capacity of the parents or evolving needs of the child. Under the HMA, maintenance can be modified through petitions filed under Section 25, which allows courts to vary the terms of any decree or order concerning maintenance. Similarly, under Section 127 of the CrPC, courts have the authority to revise maintenance orders if there is a change in the financial status of the parties involved. These modification orders play a pivotal role in safeguarding the best interests of children by ensuring they receive adequate support and care in line with prevailing circumstances.

References:

1. *Sunita Kachwaha v. Anil Kachwaha* (2002) 1 SCC 546
2. *Somabhai Bhatiya v. State of Gujarat* (2005) 3 SCC 636
3. *Shail Kumari Devi v. Krishan Bhagwan Pathak* (2008) 8 SCC 638
4. *Captain Ramesh Chander Kaushal v. Veena Kaushal* (1978) 4 SCC 70
5. *Vinny Parmvir Parmar v. Parmvir Parmar* AIR 2011 SC 2748
6. *Savitri Pandey vs. Prem Chandra Pandey* AIR 2002 SC 591
7. *Ratan Lal & Dhiraj Lal, The Code of Criminal Procedure 17th Edition*, Reprint 2007, Wadhwa & Company, Nagpur
8. *Paras Diwan, "Family Law" 7th Edition*, Allahabad Law Agency

The Honourable Supreme Court in *Ramesh Chander Kaushal v. Veena Kaushal and Ors.* [AIR 1978 SC 1807] held that an order directing payment of maintenance is a measure of social justice and specially enacted to protect women and children, and it falls within the sweep of Art.15 (3) of the Constitution of India and reinforced by Art.39.

36. In *Chaturbhuj v. Sita Bai* [2008 (1) KLT 41 (SC)] it was held that the object of payment of maintenance was to prevent vagrancy and destitution.

37. In *Badsha v. Urmila Badshah Godse & Anr* [(2014) 1 SCC 188] it was held that, while dealing with applications of destitute wife or helpless children, the court is dealing with the marginalised sections of the society. The purpose OP (FC).No.324 OF 2019 21 is to achieve "social justice," which is the constitutional vision enshrined in the Preamble of the Constitution of India. It is the bounden duty of courts to advance the cause of social justice. While interpreting a statute, the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. If this interpretation is not accepted, it will amount to giving a premium to the husband for defrauding the wife.

38. In *Shamina Farooqui v. Shahid Khan* [AIR 2015 SC 2025] it was declared that: the wife has an absolute right of maintenance and the husband is not absolved from his obligation to provide maintenance merely on his plea of financial constraints, so long as he is healthy, able-bodied and capable for his own support.

39. This Court in *Ivan Rathinam v. Milan* OP (FC).No.324 OF 2019 22 Joseph [2018 (2) KLT 884] held: the object behind directing a man to pay maintenance is to compel him to perform his moral obligation which he owes to the society in respect of his wife and children, so that they are not left beggared and destitute on the scrapheap of society, and driven to a life of vagrancy, immorality and crime for their sustenance.

Kerala High Court has held that a **father's pensionary benefits** are **not immune** from **attachment towards payment** of **maintenance** to **children**Unknown vs The Honourable Mr.Justice C.S.Dias on 29 January, 2020 Bench: K.Harilal, C.S.Dias