
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**RIGHT TO MAINTENANCE OF WOMEN UNDER THE BHARATIYA
NAGARIK SURAKSHA SANHITA, 2023: A CRITICAL ANALYSIS**

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Abstract

The right to maintenance is an important legal right that guarantees economic stability and honor to women who cannot sustain them in case of separation, neglect, or divorce. It represents the constitutional values of equality “social justice and right to lead a dignified life. Having adopted the Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS), the provisions of maintenance under Section 125 of the Code of Criminal Procedure, 1973 got the new Section 144 therein. This paper takes a critical approach to an examination of the legal framework of women right to maintenance under the BNSS, and an analysis of whether the new provision addresses access to financial justice among women.

This research takes a doctrinal research approach that will utilize the interpreting of constitutional clauses, statutory acts, judicial rulings, and academic literature. It contrasts the Section 144 of the BNSS and the previous Section 125 of the CrPC and discusses significant judicial doctrines, which have influenced the act regarding maintenance. The paper also outlines practical difficulties in implementing maintenance orders and provide recommendations on enhancing the effectiveness of the current legislation. It concludes that although the BNSS has many similarities with the previous regime of maintenance, the regime must be implemented and enforced in time to provide any sort of meaningful protection to the rights of women.

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Keywords: *Maintenance, Women, Bharatiya Nagarik Suraksha Sanhita, 2023, Section 144, Gender Justice.*

1. Introduction

The right to maintenance is a crucial legal right that ensures that women are not economically victims due to neglect, separation, divorce, or abandonment. It guarantees financial aid and helps women have a dignified, safe and self-reliant life. Maintenance is not only a statutory right but also one of the manifestations of social justice to prevent destitution and lead to gender equality.² Maintenance law is established by Articles 14, 15³ and 21³ of the Constitution of India, with the Directive Principles of State Policy, especially Articles 38 and 39.⁴ Section 125 of the Code of Criminal Procedure, 1973 used to provide a secular solution to maintenance regardless of religion. This has been superseded by Section 144 with no substantive adjustments occurring to this provision now that the Bharatiya Nagarik Suraksha Sanhita (2023), came into force.⁵ This essay discusses the legislation, judicial trends, comparatives and practical issues surrounding the rights of women to maintain during the undergoing Section 144 under the BNSS.

2. Evolution of the Right to Maintenance in India

Maintenance has become a statutory right which is enforceable as opposed to a moral and a religious command.⁶ The Manusmriti and the Yajnavalkya Smriti (8th century BCE), which are ancient Hindu texts, and the Islamic law also accepted the obligation of a husband to support his wife financially.⁷ Under colonization, the maintenance laws were under the control of varied individual statutes, which created unequal protection of the women of various communities. Section 125 of the Code of Criminal Procedure, 1973 came to offer a uniform and reduce religious solution to the issue of destitution and offer financial support to wives, children, and parents, who could not sustain themselves. As time went on, case law broadened the definition of maintenance to acknowledge it as a tool of social justice and protection of constitutional

² Paras Diwan, *Modern Hindu Law* 315–20 (Allahabad Law Agency, 29th ed. 2022).

³ INDIA CONST. arts. 14, 15(3), 21.

⁴ INDIA CONST. arts. 38, 39.

⁵ Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, Section 144 (India).

⁶ PARAS DIWAN, *FAMILY LAW* 295–310 (Allahabad Law Agency, 12th ed. 2021).

⁷ MULLA, *PRINCIPLES OF HINDU LAW* 698–715 (Satyajeet A. Desai ed., LexisNexis, 24th ed. 2021)

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rights.⁸With the implementation of Section 144 of the BNSS, this legal regime will remain intact, with respect to maintaining the fundamental principles of maintenance law.

3. Right to Maintenance under Section 144 of the BNSS

Section 144 refers to the Bharatiya Nagarik Suraksha Sanhita, 2023, a Judicial Magistrate has the power to provide maintenance to wives, children and dependent parents who are incapable of supporting themselves. The provision has the effect of offering a quick and summary solution to negligence or lack of financial assistance by an individual who has the means. It also offers safeguard to the divorced women who have not moved in with another partner hence security of economic gain even after marriage breakages. But in some situations, donee of maintenance may be denied, including where the wife is living in adultery, or refuses to live with her spouse without an adequate sufficient reason, or both spouses are living apart by mutual consent. In general, Section 144 preserves to a great extent the welfare-focused spirit of Section 125 CrPC and ever-strengthens maintenance as both a legal and social duty and not an act of charity.⁹

4. Comparative Analysis of Section 125 CrPC and Section 144 BNSS

The clauses of the BNSS in Section 144 is an enormous replica of the provisions of Section 125 of the Code of Criminal Procedure, 1973. Both the provisions are a summary of action being taken against wives, children and parents who are not able to sustain themselves and authorize Judicial Magistrates to grant a monthly maintenance. Rules on the eligibility, reasons to claim maintenance and exceptions are similar. The only distinction is that the BNSS is a component of more comprehensive criminal justice reforms intended to enhance efficiency in the processes, promote the use of technology, and decrease delays in the legal process. The substantive law on maintenance is unchanged; however the change in the procedural changes under the BNSS is likely to lead to faster disposal of cases. The success of these reforms, will however, rely on how well they are implemented and adherence to maintenance orders in time.¹⁰

5. Judicial Interpretation of the Right to Maintenance

⁸*Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556; *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

⁹*Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556; FLAVIA AGNES, *FAMILY LAW: VOLUME I—FAMILY LAWS AND CONSTITUTIONAL CLAIMS* 165–78 (Oxford Univ. Press 2011).

¹⁰ K.N. CHANDRASEKHARAN PILLAI, *R.V. KELKAR'S CRIMINAL PROCEDURE* 560–75 (Eastern Book Co., 8th ed. 2023).

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The Indian courts have been instrumental in developing and safeguarding the right of maintenance by having been interpreted as an aspect of social justice and not charity.¹¹In Mohd. In A. Khan v. Shah Bano Begum (1985),¹²the Supreme Court was of the view that a divorced Muslim woman is entitled to maintenance under the CrPC of 125 despite personal law. In the case of Danial Latifi v. Union of India (2001),¹³the Court made sure that the divorced Muslim women are given just and fair financial support after iddat. The Supreme Court provided detailed principles on how to prove the maintenance, such as requires disclosure of income, assets, and liabilities to make a fair and consistent decision in the case of Rajnesh v. Neha (2020),¹⁴Later on, in Mohd. In the case of Abdul Samad v. State of Telangana (2024),¹⁵the Court reinstated the secular and welfare-oriented view of the maintenance provisions. These seminal cases remain in the interpretation and application of the Section 144 of the BNSS.

6. Challenges and Critical Analysis

Section 144 of the BNSS still replicates the advantageous structure of Section 125 CrPC, but a number of issues are still problematic in its application, which are practical and legal. Maintenance proceedings are usually characterized by lengthy delays thus nullifying the aim of granting quick financial options to women. The standards also vary in the determination of maintenance amounts in courts resulting in inconsistency in awards.¹⁶The second significant issue is the poor implementation of maintenance orders, according to most respondents many of them are evasive even when ordered by the courts. The access to justice is further limited by the lack of legal awareness, especially among economically less educated women in rural regions. Even though the BNSS brings about the modernisation of the criminal procedure, there are no other substantive reforms which can be taken in these long-term issues. As such, the

¹¹ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 1418–25 (LexisNexis, 9th ed. 2024).

¹² (1985) 2 SCC 556.

¹³ (2001) 7 SCC 740.

¹⁴ (2021) 2 SCC 324.

¹⁵ 2024 SCC OnLine SC 1686.

¹⁶ K.N. CHANDRASEKHARAN PILLAI, *R.V. KELKAR'S CRIMINAL PROCEDURE* 570–75 (Eastern Book Co., 8th ed. 2023).

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implementation process, judicial sensibility and enforcement mechanisms that are more stringent are what are needed to meet the purpose of the maintenance law.¹⁷

7. Suggestions

Section 144 of the BNSS can be made more effective by improvement of its implementation and procedural changes. Maintenance applications are to be eliminated within a time limit to make sure that women receive money as soon as possible. Always, the rules that the Supreme Court sets out must be used to establish standard maintenance by considering the income, assets, liabilities, standard of living and reasonable needs of both parties. Greater enforcement mechanisms must be implemented to comply with maintenance orders on time. The number of legal aid services and awareness programmes needs to be increased especially in rural and economically disadvantaged areas, in order to enable women to enjoy their constitutional rights. Further advancements through increased use of technology when filing applications, holding virtual hearings and keeping track of compliance may enhance efficiency as well as eliminate unwarranted delays.

8. Conclusion

The right to maintenance is a vital legal protection, which covers women against financial insecurity and safeguard the constitutional right of women to live with dignity. Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 largely carries on the principles of Section 125 CrPC, which still helps to maintain the welfare-oriented character of the maintenance law in India. History of judicial interpretations of maintenance clauses has never ceased to be liberal and purposive to the cause of promoting the constitutional ethics of equality, social justice and gender empowerment. Nevertheless, problems like delays in adjudication, uncoordinated decision on maintenance, ignorance, and poor enforcement still compromise the efficiency of the law. Thus, it is necessary to have effective enforcement strategies, judicial sensibility” and more effective enforcement strategies coupled with increased awareness of the law to see that maintenance law achieves its goal of bringing social justice, gender equality and economic security to women.

¹⁷ M.P. JAIN, *INDIAN CONSTITUTIONAL LAW* 1418–25 (LexisNexis, 9th ed. 2024).

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