

**Marriage Ends but Parenting does not: The Judiciary's Role in  
Protecting the Child's Independent and Immediate Right to  
Maintenance in India**

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## **Abstract:**

The end of a marriage does not terminate parental responsibilities, especially the duty to provide for a child's maintenance and welfare. In India, where family structures are changing rapidly due to social and economic shifts, the judiciary has played a crucial role in ensuring that children's rights remain protected despite parental separation. This paper examines the judiciary's role in securing the child's independent and immediate right to maintenance, with particular emphasis on the landmark case *Rajnesh v. Neha* (2021). In this judgment, the Supreme Court established comprehensive guidelines for maintenance proceedings, including the filing of financial affidavits by both parties, standardization of criteria for determining maintenance, and mechanisms to prevent delay and multiplicity of litigation. Through this decision, the Supreme Court harmonized maintenance laws across India, promoting uniformity, fairness, and efficiency in family law proceedings. The Court underscored that maintenance is not a charity but a child's fundamental right to live with dignity and access education, healthcare, and emotional stability. By ensuring uniformity, transparency, and accountability, the judiciary reaffirmed its commitment to protecting children from the adverse effects of marital breakdowns. The paper concludes that effective judicial intervention transforms maintenance from a procedural claim into a substantive right, ensuring that even when marriage ends, parenting and the duty of care continue unbroken.

## **Introduction:**

In recent years, Indian families have seen major changes with a steady rise in marital separations and divorces, especially in cities. This change is mainly because of higher education, financial independence particularly among women, changing social values, and people giving more importance to personal happiness and dignity rather than staying in unhappy marriages. The judiciary, therefore, plays a pivotal role in ensuring that children do not suffer deprivation due to parental discord. Childhood care and support plays a very essential role in the growth of the child. The future potency of the child depends upon their early-age maintenance and care. However, when the relationship between spouses breaks down, the question of financial responsibility toward children assumes central importance. It is the duty of each parent to provide the best that they might for the development of their child. Maintenance, therefore, it is not merely a moral obligation, it is a *legal, constitutional, and human right* essential to a child's survival, growth, and dignity. So it's parent's social, moral and legal obligation to maintain their child despite the fact that they are separated or living-together

However, in practice, the enforcement of this right often faces challenges such as procedural delays, multiple legal proceedings, and one parent's unwillingness to comply with court orders. Courts have thus become the most vital instruments in safeguarding children's *immediate right to sustenance*. Importantly, a child's right to maintenance is **independent** of the mother's claim. Even if the wife's maintenance is denied or disputed, the court must ensure that the child receives adequate and timely support.

Over time, the judiciary has shown increasing sensitivity and commitment to protecting the welfare of children. Through progressive judgments and evolving interpretations, the courts have emphasized that maintenance orders must be **prompt, fair, and effective**, reaffirming the principle that the welfare of the child is always the most important consideration in family law matters.

### **Meaning of Maintenance**

The term "maintenance" denotes the financial support provided by one party to cover the cost-of-living expenses, which includes provisions for food, clothing, residence, education, and medical attendance and treatment. According to Section 3(b) of the Hindu Adoption and Maintenance Act, 1956 in the case of an unmarried daughter, maintenance shall also cover reasonable expenses incurred during and pertaining to her marriage. The objective of these laws is to ensure that children receive proper care, education, and upbringing, and that both parents take equal responsibility for their child's welfare.

### **OBJECTIVE**

1. **To examine the evolution of the judiciary's role** in safeguarding the child's independent and immediate right to maintenance in India.
2. **To evaluate the judicial recognition of the child's right as independent of the mother's entitlement**, emphasizing the need for prompt interim relief.

### **RESEARCH METHODOLOGY**

In this research paper, Author has used doctrinal research method. And analysed various Acts and Judgement.

### **Legal Framework Governing Maintenance in India under the Hindu Adoptions and Maintenance Act 1956**

Section 20 of the HAM ACT imposes an obligation upon the parents—mother and father, both equally to maintain the children—both legitimate and illegitimate. This is a unique feature of the Hindu law where both the parents are equally responsible to maintain the children. S.20 (2) of the HAM ACT lays down that the children are entitled to maintenance during their minority. So far as the daughter is concerned, the obligation to maintain a minor daughter subsists till her marriage takes place. On attaining majority, if she remains unmarried, the

obligation continues provided she is unable to maintain herself out of her own earnings or other property. This right of maintenance for the daughter is extended till she gets married. The parents are obliged to bear her marriage expenses.

### **Child's right of Maintenance under Hindu Marriage Act 1955**

Section 26 of the HMA, 1955 provides the provision for passing interim orders with respect to education, maintenance and custody of a minor child, if any proceedings for either regarding dissolution of marriage, restitution of conjugal rights or any other proceedings. Trial or appellate courts have the power to pass such interim maintenance orders. Under this Act, both the parents, or either father or mother, are liable to maintain the child as per court orders

### **Maintenance under the Bhartiya Nagrik Sukhsha Sanhita 2023**

Section 125 to 128 of the Criminal Procedure code (Section 145 and 146, BNSS) defined secular law which provides provisions for maintenance of wife's, children and parents. The provisions of this act are intended to fulfill a social purpose. Their object is to compel a man to perform the moral obligations, which he owes to the society in respect of his wife, children and parents. A minor child, whether legitimate or illegitimate, is entitled to maintenance, and even an adult child who is unable to maintain themselves due to physical or mental disability can claim support. The court determines the amount of maintenance by considering the income and needs of both parties. It may also grant interim maintenance during the pendency of proceedings to provide immediate relief. Failure to comply with the maintenance order may result in recovery by warrant and imprisonment for default. This provision aims to uphold social justice and prevent vagrancy. It recognizes the moral and legal duty of parents to provide for their children. Thus, the BNSS reinforces the continuing obligation of parents to ensure their child's welfare, even after family breakdown or separation.

### **Leading Judgments where Court Prioritised Child's Maintenance**

#### **1. SMT GEETA & ANR. VS THE STATE (GOVT.OF NCT.OF DELHI) & ANR. 2025**

The Court reaffirmed that "a child's right to maintenance is independent of the mother's entitlement and must be ensured to safeguard her welfare, education, and proper upbringing." In this case, Justice Swarana Kanta Sharma observed that "the child is an innocent victim of the breakdown of marriage, and therefore, her sustenance, education, and future cannot be compromised merely because the relationship between the spouses has soured." The Court further held that while the wife's claim for maintenance was denied due to lack of financial disclosure, the father's obligation to maintain his child is absolute under Section 125 of the Cr.P.C. and cannot be avoided on account of marital discord.

## **2. Rajnesh v. Neha (2021),**

In this case the Supreme Court of India, established a uniform framework for maintenance proceedings across India. Multiple applications were filed by wife under different laws which led to confusion, duplication, and conflicting orders. Recognizing this as a systemic issue affecting thousands of litigants, the Court noted that the absence of a uniform procedure for determining maintenance had resulted in inconsistent decisions, unnecessary delays, and financial hardship for dependents, particularly women and children. To address this, the Supreme Court issued comprehensive directions applicable to all courts dealing with maintenance matters under the CrPC, the Hindu Marriage Act, 1955, the Domestic Violence Act, 2005, and other personal laws.

The Court made it mandatory for both parties to submit a detailed affidavit of income, assets, and expenditure to ensure transparency and accuracy in assessing financial capacity. It directed that maintenance applications should be decided within 60 days from the date of service of notice to prevent undue hardship, and interim maintenance should be awarded at the earliest possible stage to safeguard the dependents' immediate needs. Further, the Court emphasized that all parties must disclose any previous or pending maintenance proceedings to avoid multiple or overlapping claims. In cases of deliberate non-compliance with maintenance orders, the Court directed strict enforcement measures, including attachment of property and imprisonment under Section 125(3) CrPC.

Most importantly, the Supreme Court reaffirmed that a child's right to maintenance is absolute, independent, and inalienable, and cannot be made dependent on the outcome of the mother's claim. Maintenance, the Court held, is not an act of charity but a statutory, constitutional, and human obligation flowing from the principles of social justice and the right to live with dignity under Article 21 of the Constitution. The judgment also introduced uniform criteria for determining maintenance amounts, considering factors such as the status of the parties, reasonable needs of the claimant, educational and medical expenses of children, and the paying capacity of the respondent.

Through this decision, the Supreme Court harmonized maintenance laws across India, promoting uniformity, fairness, and efficiency in family law proceedings. It built upon the foundation laid in *Kusum Sharma* (2020) and transformed those guidelines into a nationwide standard. This case judgment thus stands as a milestone in Indian family law, ensuring that the child's and spouse's right to maintenance is immediate, enforceable, and protected against procedural injustice, reflecting the judiciary's commitment to social justice and the welfare of the child.

### **3. Kusum Sharma v. Mahinder Kumar Sharma (2020),**

In this landmark case Delhi High Court, under Justice J.R. Midha, established comprehensive guidelines to ensure fairness, transparency, and uniformity in maintenance proceedings. The Court noted that maintenance cases often face delays, inconsistencies, and concealment of income, causing hardship to dependent spouses and children. To address these issues, the Court directed that both parties must file a detailed “Affidavit of Income, Assets, and Expenditure” at the initial stage of every case under Section 24 of the Hindu Marriage Act, Section 125 Cr.P.C. (now Section 144 BNSS), and Section 20 of the Hindu Adoptions and Maintenance Act. This measure aimed to promote truthful financial disclosure and prevent parties from misleading the court.

Court emphasized that maintenance is a legal and social obligation, not a matter of charity, and that a child’s right to maintenance is independent of the mother’s claim. Even if the wife’s entitlement is disputed, the child must receive immediate financial support to ensure proper upbringing and education. The Court also warned that false or incomplete income disclosure amounts to perjury and must be treated as a serious offence.

To ensure timely relief, the Court directed that interim maintenance be fixed at the earliest and that all maintenance cases be disposed of promptly. The guidelines were made binding on all courts in Delhi and later adopted across India. This judgment became a cornerstone of maintenance jurisprudence, promoting accountability, efficiency, and child welfare, and laid the foundation for the Supreme Court’s decision in *Rajnesh v. Neha* (2021).

### **4. Shailja v. Khobbanna (2018) 12 SCC 199**

The Supreme held that the child’s right to maintenance is separate and not affected by the mother’s financial capacity. Both parents share an equal legal duty to support their children.

### **5. Bhuwan Mohan Singh v. Meena & Ors. (2015) 6 SCC 353**

The Court observed that maintenance proceedings are meant for sustenance, not for “luxurious survival.” The object of Section 125 CrPC is to prevent *destitution and vagrancy* by ensuring that a woman and child dependent on the husband are not left helpless. Thus, the Court held that delay in granting maintenance frustrates the very object of the law, as the relief becomes meaningless when delivered too late. The Supreme Court criticized the delay caused by trial courts and subordinate courts in disposing of maintenance petitions, calling it a “sad reflection” on the justice delivery system. It urged all courts dealing with family disputes to adopt a time-bound and empathetic approach, especially in cases involving women and children’s rights. The Court directed Family Courts and Magistrates to ensure that maintenance applications are decided expeditiously, ideally within a few months, and that unnecessary adjournments should be avoided.



## Conclusion

From these rulings, it is clear that the judiciary in India has adopted a child-centric approach in maintenance matters. Courts have progressively recognized maintenance as a right that directly accrues to the child, independent of the marital disputes between the parents. In most cases, when the parents are separated, the child remains in the custody of the mother, making it difficult for her to balance earning a livelihood with the responsibility of childcare. The child often suffers emotionally and physically when the mother is compelled to leave home for work without adequate support. Therefore, it is essential that maintenance provisions are implemented swiftly to safeguard the child's welfare. There should ideally be a mechanism ensuring that the child receives maintenance from the very first day of the application, preventing unnecessary hardship and delay. Even if the wife's entitlement to maintenance is under dispute, the child's maintenance must still be ordered without delay, as the child's right to financial support is independent and unconditional. Delayed maintenance often disrupts the child's education, nutrition, and overall well-being, causing avoidable suffering. Hence, courts must ensure immediate interim maintenance for the child, even during ongoing proceedings, so that the child can continue schooling, access healthcare, and live with dignity. Swift judicial action in granting child maintenance not only secures the child's future but also upholds the humanitarian purpose of family law — to protect and prioritize the most vulnerable member of the family.

## Suggestions

- To avoid hardship to the child, courts should grant **interim maintenance automatically** from the date of filing, unless strong reasons exist to deny it.
- Strict penalties such as attachment of salary, property seizure, suspension of driving licence/passport, and interest on arrears should be imposed on wilful defaulters.
- Family court judges should receive specialized training to understand the psychological, educational, and developmental needs of children while deciding maintenance matters.

## References

1. <https://lawrato.com/indian-kanon/family-law/maintenance-laws-for-children-in-india-2960>
2. SMT GEETA & ANR. VS THE STATE (GOVT.OF NCT.OF DELHI) & ANR.
3. RAJNESH V. NEHA (2021) 2 SCC 324
4. KUSUM SHARMA V. MAHINDER KUMAR SHARMA (2020)
5. SHAILJA V. KHOBBANNA (2018) 12 SCC 199

6. BHUWAN MOHAN SINGH V. MEENA & ORS. (2015) 6 SCC 353
7. SECTION- 145 AND 146 OF THE BHARTIYA NAGRIK SUKHSHA SANHITA 2023
8. SECTION -20 OF THE HINDU ADOPTIONS AND MAINTENANCE ACT 1956
9. SECTION - 26 OF HINDU MARRIAGE ACT 1955

