

# Judicial Activism and Women's Right to Maintenance: An Evolutionary Perspective in Indian Law

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## ARTICLE INFO

## ABSTRACT

This paper explores the transformative role of judicial activism in shaping the legal framework concerning women's right to maintenance in India. Amidst the evolving socio-legal landscape, the judiciary has emerged as a pivotal force in addressing the disparities and enhancing the protection afforded to women under maintenance laws. Through a methodical examination of case laws, legislative amendments, and judicial pronouncements, this study delineates the trajectory of legal reforms catalyzed by judicial interventions. The research adopts a qualitative analysis, drawing on a rich corpus of legal documents, scholarly articles, and landmark judgments to unravel the complexities of maintenance rights and the judiciary's instrumental role in their expansion. The findings underscore the judiciary's proactive stance in interpreting and filling the lacunae within the legal provisions, thereby significantly contributing to the advancement of women's rights in India. The paper concludes by affirming the positive impact of judicial activism on the legal recognition and enforcement of maintenance rights, while also acknowledging the challenges and critiques that accompany this judicial approach. Recommendations for future legal reforms and the sustained engagement of the judiciary in promoting gender equality are proposed, highlighting the ongoing need for a dynamic and responsive legal system.

**Key words:** Judicial Activism, Women's Rights, Maintenance Laws, Legal Framework, Socio-Legal Landscape, Gender Equality, Landmark Judgments, Legal Provisions

## 1. Introduction

### 1.1. Historical Background

The evolution of women's rights to maintenance in India is a complex narrative shaped by socio-political changes across different eras: pre-colonial, colonial, and post-colonial periods. Each era brought its unique challenges and reforms, significantly impacting the legal rights of women regarding maintenance.

#### 1.1.1. Pre-Colonial Period

In the pre-colonial era, the Indian subcontinent was a mosaic of diverse cultures, religions, and legal practices. Hindu and Islamic laws were the primary sources of legal frameworks, which included provisions for the maintenance of women. Under Hindu law, the concept of 'Stridhan' was prevalent, where women were entitled to own property, which included gifts received at the time of marriage. Islamic law also provided for 'Mehr' (dower) and maintenance to women, ensuring their financial security in the event of divorce or the husband's death (Agnes, 1999)<sup>1</sup>.

#### 1.1.2. Colonial Period

The British colonial rule introduced significant changes to the Indian legal system, including the codification of laws. The colonial administration attempted to standardize legal practices, often blending British legal principles with traditional Indian laws. During this period, the British enacted several laws affecting women's rights, such as the Hindu Widow Remarriage Act of 1856, which, while progressive in intent, often did not

<sup>1</sup> Agnes, F. (1999). *Law and Gender Inequality: The Politics of Women's Rights in India*. Oxford University Press.

directly address the issue of maintenance rights for women. However, the codification efforts led to the establishment of courts and legal procedures that provided a platform for addressing maintenance rights (Derrett, 1963)<sup>2</sup>.

### 1.1.3. Post-Colonial Period

The post-colonial period marked a significant shift towards recognizing and enforcing women's rights, including the right to maintenance. The Constitution of India, adopted in 1950, laid down the foundation for gender equality, influencing subsequent legal reforms. The Hindu Marriage Act of 1955 and the Hindu Succession Act of 1956 were landmark legislations that reformed Hindu law, including provisions for maintenance and property rights for women. Similarly, the Muslim Women (Protection of Rights on Divorce) Act of 1986 was a significant step towards enhancing maintenance rights for Muslim women, although it sparked considerable debate and controversy (Parashar, 1992)<sup>3</sup>.

Throughout these periods, socio-political changes, including the women's rights movement and international influences, have played a crucial role in shaping the legal framework regarding women's maintenance rights. The judiciary, through its interpretations and rulings, has also contributed significantly to the evolution of these rights, ensuring that legal reforms keep pace with changing societal norms and values.

### 1.2. Objectives of the study

1. To analyze the impact of judicial activism on the evolution of women's rights to maintenance in India.
2. To examine the challenges and critiques associated with the implementation of maintenance laws.
3. To identify and propose recommendations for enhancing the effectiveness of maintenance laws in promoting gender equality and social justice.

## 2. Judicial Activism in India

Judicial activism in India represents a dynamic interplay between the judiciary and legislative processes, particularly in the realms of social justice and gender equality. This concept underscores the judiciary's proactive role in interpreting the Constitution and laws in a manner that extends beyond the literal text, to address emerging societal needs and injustices. The theoretical underpinnings of judicial activism are rooted in the belief that courts have an imperative role in safeguarding rights and liberties, especially in contexts where legislative and executive actions are insufficient or negligent.

### 2.1. Theoretical Justifications for Judicial Activism

The justification for judicial intervention in legislative processes, especially concerning social justice and gender equality, is anchored in the principle of 'transformative constitutionalism'. This principle envisages the Constitution as a living document, one that must be interpreted in a manner that furthers the goal of transforming society towards ensuring dignity, equality, and justice for all, particularly the marginalized and vulnerable sections (Subramanian & Sharma, 2022)<sup>4</sup>. In this light, judicial activism is not seen merely as an encroachment on the legislative domain but as a fulfillment of the judiciary's constitutional mandate to protect and enforce fundamental rights.

### 2.2. Judicial Activism and Gender Equality

In the context of gender equality, the Indian judiciary has played a pivotal role in advancing women's rights through landmark decisions and interpretations. Gupta (2020)<sup>5</sup> highlights how the judiciary has interpreted the constitutional mandate of gender justice to extend and apply protections in innovative ways, often filling gaps left by legislative inaction. For instance, the judiciary's interventions in cases related to sexual violence, domestic abuse, and maintenance rights have significantly contributed to the legal recognition of women's rights and the establishment of precedents that prioritize gender justice (Bhadra, 2017)<sup>6</sup>.

## 2.3. Critique of Judicial Activism

<sup>2</sup> Derrett, J. D. M. (1963). *Introduction to Modern Hindu Law*. Oxford University Press.

<sup>3</sup> Parashar, A. (1992). *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality*. Sage Publications.

<sup>4</sup> Subramanian, S., & Sharma, R. (2022). Toward an anti-caste and feminist vision of transformative justice: Analyzing social media activism against sexual violence. *Women's Studies in Communication*, 1–17. <https://doi.org/10.1080/07491409.2022.2135948>

<sup>5</sup> Gupta, S. (2020). Judicial exposition of gender justice as a constitutional mandate: A narrative from India. *Brawijaya Law Journal*, 7(2). <https://doi.org/10.21776/ub.blj.2020.007.02.03>

<sup>6</sup> Bhadra, B. (2017). Rape law reforms in India: Catalyst to gender justice or modernization in legal reforms? In *Crime, Criminal Justice, and the Evolving Science of Criminology in South Asia* (pp. 359–382). Palgrave Macmillan UK. [https://doi.org/10.1057/978-1-137-50750-1\\_13](https://doi.org/10.1057/978-1-137-50750-1_13)

Despite its contributions, judicial activism has faced criticism from a legal philosophy perspective, with detractors arguing that it represents an overreach of judicial power into the legislative domain. Critics contend that such activism undermines the principle of separation of powers, potentially leading to a 'government by judiciary' scenario, where courts assume roles beyond their constitutional mandate (Choudhary, 2022)<sup>7</sup>. This critique emphasizes the need for judicial restraint and cautions against the potential for judicial decisions to reflect individual judges' preferences rather than a principled interpretation of the law.

Judicial activism in India, especially in the sphere of social justice and gender equality, embodies the judiciary's response to evolving societal norms and injustices. While it has been instrumental in advancing rights and protections, the critique of judicial overreach highlights the delicate balance that must be maintained between judicial intervention and legislative authority. As India continues to grapple with complex social and legal challenges, the debate over the scope and limits of judicial activism remains a pivotal aspect of its democratic and legal discourse.

### 3. Case Studies

**Table 1: Summary of Landmark Cases on Judicial Activism and Women's Rights to Maintenance in India**

Case Name and Year	Overview	Judicial Interpretation	Socio-Legal Impact	Subsequent Legal Debates/Legislative Changes
Shah Bano Begum (1985)	Supreme Court ruling on maintenance rights for a divorced Muslim woman.	Entitled to maintenance under Section 125 of CrPC, irrespective of religion.	Highlighted the conflict between personal laws and secular maintenance laws; sparked debate on uniform civil code.	Led to the Muslim Women (Protection of Rights on Divorce) Act, 1986, limiting maintenance rights post-divorce.
Vishaka v. State of Rajasthan (1997)	Laid down guidelines to prevent sexual harassment at the workplace.	Established preventive measures for sexual harassment, filling the legislative void.	Enhanced women's rights and safety at work; acknowledged the judiciary's role in protecting women's rights.	Influenced the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
Joseph Shine v. Union of India (2018)	Decriminalized adultery, striking down Section 497 of the IPC.	Recognized the dignity of women and their equal status within marriage, striking down adultery as a criminal offense.	Challenged patriarchal structures within marital laws; recognized women's autonomy and equality.	Prompted discussions on revising personal and matrimonial laws to reflect gender equality and personal liberty.

The summary discusses landmark cases in India, including Shah Bano Begum (1985), Visaka v. State of Rajasthan (1997), and Joseph Shine v. Union of India (2018). These cases highlight the judiciary's role in promoting gender justice and equality by challenging traditional interpretations of religious laws. Shah Bano Begum established the principle that Muslim women are entitled to maintenance beyond the iddat period under Section 125 of the Code of Criminal Procedure, 1973. Visaka v. State of Rajasthan (1997) established the Vishaka Guidelines, the first time sexual harassment was formally recognized and addressed in Indian law. The case set a precedent for women's rights in the workplace and emphasized the importance of creating safe work environments for women. Joseph Shine v. These cases demonstrate the judiciary's progressive stance on personal liberty, autonomy, and gender equality within marriage.

<sup>7</sup> Choudhary, S. (2022). Instant triple talaq: An another instance of judicial overreach into mare's nest. *RESEARCH HUB International Multidisciplinary Research Journal*, 9(2), 39–49. <https://doi.org/10.53573/rhimrj.2022.v09i02.008>

#### 4. Evolution of Maintenance Laws in India: A Global Context

Maintenance laws in India have evolved over time due to the country's efforts to align its legal framework with international standards and human rights conventions. Prior to independence, these laws were governed by religious and customary laws, which varied across different communities. Post-independence reforms, such as the adoption of the Constitution of India in 1950, laid the foundation for subsequent legal reforms, including the Hindu Marriage Act (1955) and the Hindu Adoptions and Maintenance Act (1956).

India's commitment to international legal instruments has played a crucial role in shaping its maintenance laws. The ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993 prompted India to align its domestic laws with international standards regarding women's rights. Landmark judgments have expanded the interpretation of maintenance rights, ensuring more comprehensive protection for women. For example, the Supreme Court's interpretation of maintenance laws has emphasized the need to provide adequate and dignified living conditions for divorced women, reflecting principles enshrined in international human rights conventions.

Despite these advancements, the implementation of maintenance laws in India faces challenges, including disparities in legal awareness, social stigma, and procedural complexities. The ongoing debate around the Uniform Civil Code highlights the tension between maintaining cultural diversity and ensuring uniform rights across different communities.

In summary, the evolution of maintenance laws in India reflects a gradual shift towards greater gender equality, influenced by both international legal instruments and domestic judicial activism (Alim, 2021)<sup>8</sup>. As India navigates its complex socio-legal landscape, the interplay between global norms and local traditions will remain central to the further development of maintenance laws.

#### 5. Challenges and Critiques in Implementing Maintenance Rights in India

The implementation of maintenance rights in India faces a myriad of challenges, reflecting the complex interplay between legal frameworks, societal norms, and ground realities. Empirical studies and surveys have shed light on these challenges, offering insights into the difficulties faced by individuals seeking maintenance (Shanmugaiah, 2012)<sup>9</sup>. Additionally, non-governmental organizations (NGOs) and women's rights groups play a crucial role in addressing these issues, advocating for legal reforms and supporting affected individuals.

##### 5.1. Empirical Insights into Implementation Challenges

Empirical studies, such as the critical appraisal by Issac et al. (2021)<sup>10</sup>, highlight the challenges in the implementation of the Maintenance and Welfare of Parents and Senior Citizens Act 2007. The study points to gaps in the legal framework and difficulties in enforcement, which hinder the effective realization of maintenance rights. Similarly, a socio-legal perspective on the right of aged persons to live with dignity underscores the challenges faced by senior citizens in accessing maintenance rights, emphasizing the need for a more compassionate and effective legal system (Right of aged persons to live with dignity: A Socio-legal perspective, 2019)<sup>11</sup>.

##### 5.2. Role of NGOs and Women's Rights Groups

NGOs and women's rights groups play a pivotal role in bridging the gap between legal provisions and their implementation. These organizations not only provide legal aid and support to individuals seeking maintenance but also engage in advocacy to bring about necessary legal reforms. Through awareness campaigns, legal assistance, and policy advocacy, these groups work towards ensuring that maintenance rights are not just theoretical entitlements but are effectively realized and enforced.

<sup>8</sup> Alim, A. (2021). Towards the Uniform Civil Code and Personal Laws in India: Gender Equality Perspective. *Annals of Bioethics & Clinical Applications*, 4(4). <https://doi.org/10.23880/abca-16000206>

<sup>9</sup> Shanmugaiah, K. (2012). THE IMPACT OF TRIPS AGREEMENT ON ACCESS TO MEDICINES IN DEVELOPING COUNTRIES: LEGAL CHALLENGES FACED BY THE PHARMACEUTICAL INDUSTRY PARTICULARLY IN INDIA. *UUM Journal of Legal Studies*, 3. <https://doi.org/10.32890/uujls.3.2012.4549>

<sup>10</sup> Issac, T. G., Ramesh, A., Reddy, S. S., Sivakumar, P. T., Kumar, C. N., & Math, S. B. (2021). Maintenance and welfare of Parents and Senior Citizens act 2007: A critical appraisal. *Indian Journal of Psychological Medicine*, 43(5 Suppl), S107–S112. <https://doi.org/10.1177/02537176211043932>

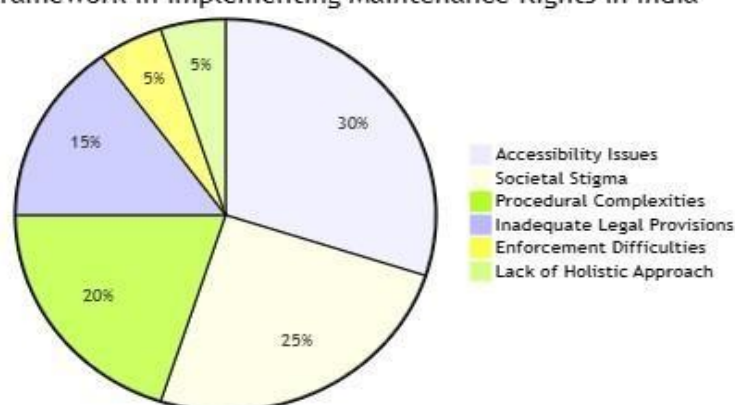
<sup>11</sup> Right of aged persons to live with dignity: A Socio-legal perspective. (2019). *International Journal of Innovative Technology and Exploring Engineering*, 8(6S4), 1430–1431. <https://doi.org/10.35940/ijitee.f1290.0486s419>

### 5.3. Critiques of the Legal Framework

Critiques of the legal framework for maintenance rights in India often focus on its inadequacy in addressing the socio-economic realities faced by women and senior citizens (Surbhi Tyagi, 2019)<sup>12</sup>. Critics argue that the legal system is often inaccessible to those who need it the most, due to factors such as legal costs, procedural complexities, and lack of awareness. Furthermore, societal stigma and patriarchal norms can discourage individuals from seeking maintenance, highlighting the need for a more holistic approach that goes beyond legal reforms to address underlying societal attitudes.

Rank	Critique of Legal Framework	Description
1	Accessibility Issues	The legal system is often inaccessible to those in need due to high legal costs, complex procedures, and lack of awareness about maintenance rights.
2	Societal Stigma	Societal norms and stigma can discourage individuals, especially women, from seeking maintenance, fearing social ostracization or backlash.
3	Procedural Complexities	The legal process for claiming maintenance is marked by procedural complexities that can delay or deter the enforcement of maintenance rights.
4	Inadequate Legal Provisions	Critics argue that existing legal provisions do not adequately address the socio-economic realities of individuals seeking maintenance, leading to insufficient support.
5	Enforcement Difficulties	Even when maintenance rights are legally recognized, enforcement remains a significant challenge, with many individuals struggling to receive the awarded maintenance.
6	Lack of Holistic Approach	The legal framework often fails to address underlying societal attitudes and patriarchal norms that impact the effectiveness of maintenance laws.

Critiques of Legal Framework in Implementing Maintenance Rights in India



The pie chart provides a visual representation of the critiques of the legal framework in implementing maintenance rights in India, breaking down the challenges into six distinct categories based on their perceived impact and frequency of mention in discussions around legal reforms for maintenance rights.

**1. Accessibility Issues (30%):** This category represents the largest portion of the chart, highlighting the significant barrier that accessibility issues pose to individuals seeking maintenance. High legal costs, complex procedures, and a lack of awareness about maintenance rights collectively contribute to making the legal system seem distant and unapproachable for many, particularly those who are most in need of its protection.

**2. Societal Stigma (25%):** The second-largest segment underscores the role of societal norms and stigma in discouraging individuals, especially women, from seeking maintenance. The fear of social ostracization or

<sup>12</sup>Surbhi Tyagi. (2019, September 30). A Socio-Legal Study of Human Rights of Senior Citizens in India. Legal Research Development, 4(1), 04–05. <https://doi.org/10.53724/lrd/v4n1.03>



backlash acts as a powerful deterrent, reflecting deep-seated cultural attitudes towards gender roles and family responsibilities.

**3. Procedural Complexities (20%):** This segment reflects the bureaucratic hurdles within the legal process that can delay or deter the enforcement of maintenance rights. The complexity of legal procedures not only adds to the inaccessibility of the system but also prolongs the resolution of maintenance claims, further exacerbating the challenges faced by claimants.

**4. Inadequate Legal Provisions (15%):** Highlighting the critique that existing legal provisions do not fully meet the socio-economic realities of individuals seeking maintenance, this segment points to the need for legal reforms that provide adequate support and protection.

**5. Enforcement Difficulties (5%):** Tied for the smallest portion of the chart, this category emphasizes the challenge of enforcing maintenance orders. Despite legal recognition of maintenance rights, the actual receipt of awarded maintenance remains a significant issue for many individuals, indicating a gap between legal entitlements and their practical realization.

**6. Lack of Holistic Approach (5%):** Also representing a smaller segment, this critique points to the failure of the legal framework to address broader societal attitudes and patriarchal norms that undermine the effectiveness of maintenance laws. It suggests a need for a more integrated approach that considers the cultural and social dimensions influencing the implementation of legal rights.

Overall, the pie chart illustrates the multifaceted nature of the challenges in implementing maintenance rights in India, highlighting the need for comprehensive legal reforms, societal change, and enhanced enforcement mechanisms to address these critiques effectively.

#### 5.4. Recommendations for Improvement

To address these challenges, recommendations include strengthening the legal framework to make it more accessible and responsive to the needs of those seeking maintenance. This could involve simplifying legal procedures, reducing costs, and increasing awareness about maintenance rights. Additionally, enhancing the capacity of NGOs and women's rights groups through funding and support can empower these organizations to provide more comprehensive assistance to individuals (Ron et al., 2016)<sup>13</sup>. Finally, societal attitudes towards maintenance need to evolve, recognizing the importance of maintenance rights in ensuring dignity and equality for all.

## 6. Conclusion

The exploration of judicial activism and the evolution of maintenance laws in India reveals a complex landscape where significant strides have been made towards enhancing women's rights and gender equality. Through landmark cases and legislative reforms, the judiciary has played a pivotal role in advancing the legal framework governing maintenance rights, reflecting a broader commitment to social justice. However, the challenges and critiques associated with the implementation of these laws highlight persistent gaps and obstacles that hinder the full realization of maintenance rights for women and vulnerable populations.

The intersection of legal reforms, societal norms, and judicial activism underscores the dynamic nature of the legal system and its capacity to drive social change. Yet, the critiques outlined—ranging from accessibility issues and procedural complexities to societal stigma and enforcement difficulties—underscore the need for a more holistic and integrated approach to ensure that legal advancements translate into tangible improvements in the lives of those they aim to protect.

The broader implications for gender equality and social justice in India are profound. The evolution of maintenance laws is not just a legal issue but a reflection of the country's ongoing struggle to reconcile traditional norms with contemporary values of equality and human rights. The challenges faced in implementing and enforcing these laws speak to the broader societal attitudes towards gender and the entrenched patriarchal structures that continue to influence legal outcomes.

### 6.1. Recommendations

#### 6.1.1. Policy-Level Suggestions:

- 1. Simplify Legal Procedures:** Streamline the process for claiming maintenance to make it more accessible, including reducing legal fees and simplifying paperwork requirements.
- 2. Enhance Legal Literacy:** Implement nationwide campaigns to raise awareness about maintenance rights and legal resources available to claimants, focusing on rural and underserved communities.
- 3. Strengthen Enforcement Mechanisms:** Develop more effective enforcement strategies for maintenance orders, including the establishment of dedicated enforcement units and the imposition of stricter penalties for non-compliance.

<sup>13</sup>Ron, J., Pandya, A., & Crow, D. (2016, November). Can Human Rights Organizations in the Global South Attract More Domestic Funding? *Journal of Human Rights Practice*, 8(3), 393–405.  
<https://doi.org/10.1093/jhuman/huw020>

### 6.1.2. Advocacy Strategies:

1. **Engage with Civil Society:** Collaborate with NGOs, women's rights groups, and community organizations to advocate for legal reforms and provide support to individuals seeking maintenance.
2. **Leverage Social Media:** Utilize social media platforms to raise awareness about maintenance rights and the challenges faced by individuals, creating broader public support for legal reforms.
3. **Policy Advocacy:** Work with policymakers to advocate for the adoption of recommendations and the implementation of reforms that address the critiques of the current legal framework.

### 6.1.3. Potential Areas for Future Research:

1. **Impact Studies:** Conduct empirical studies to assess the impact of recent legal reforms on the actual realization of maintenance rights and gender equality.
  2. **Comparative Analysis:** Explore how other jurisdictions have addressed similar challenges in implementing maintenance laws, identifying best practices that could be adapted to the Indian context.
  3. **Societal Attitudes:** Investigate the role of societal attitudes and norms in influencing the implementation and enforcement of maintenance laws, providing insights into how these barriers can be overcome.
- In conclusion, while significant progress has been made in advancing maintenance rights in India, a concerted effort from the legal community, civil society, and policymakers is required to address the remaining challenges. By adopting a holistic approach that encompasses legal reforms, societal change, and enhanced enforcement mechanisms, India can move closer to realizing its commitment to gender equality and social justice.

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