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MAINTENANCE OF CHILDREN AND PARENTS UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023: A STUDY OF LEGAL RIGHTS, JUDICIAL APPROACH AND ACCESS TO JUSTICE

Abstract

Maintenance is an essential legal mechanism for protecting persons who are unable to meet their basic needs because of age, dependency, disability or the failure of a family member to provide financial support. In India, the law relating to maintenance serves not merely a private family interest but also a broader social purpose by preventing vulnerable persons from being driven into poverty and destitution. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) addresses this responsibility through Sections 144–147, which provide for maintenance orders, procedural rules, alteration of allowances and enforcement.

This paper examines the statutory framework governing maintenance of children and parents, with particular reference to the responsibilities of persons having sufficient means, the requirement of neglect or refusal, interim maintenance, jurisdiction and enforcement. It also considers the role of judicial decisions in interpreting maintenance provisions under the former Code of Criminal Procedure, 1973, whose corresponding provisions have substantially been carried forward into the BNSS. The paper argues that the effectiveness of maintenance law depends not only on recognising a legal entitlement but also on ensuring timely adjudication, realistic assessment of financial needs, transparency in disclosure of

income and effective enforcement. Particular attention is given to the difficulties faced by children and elderly parents who depend on regular financial assistance. The paper concludes that a humane and effective maintenance system must balance the financial capacity of the person liable to pay with the genuine needs of the person claiming support, while preventing procedural delay from defeating the purpose of the law.

Keywords: *Bharatiya Nagarik Suraksha Sanhita, 2023; maintenance; children; parents; interim maintenance; access to justice.*

Introduction

The family is traditionally regarded as the primary institution responsible for providing care, financial support and protection to its members. Children depend on their parents for food, education, healthcare and a secure environment. Similarly, parents may depend on their children during old age, particularly when they are unable to earn a livelihood or meet their medical and living expenses. However, family responsibilities are not always fulfilled voluntarily. Separation, abandonment, financial disputes, neglect and changing social circumstances may leave dependent family members without adequate support. This provision ensure that will address aforesaid problems by providing a legal remedy to the person who can't maintain themselves and whose family members have a legal responsibility to support them. Its purpose is not to punish a person merely because a family relationship has deteriorated. Rather, it seeks to ensure that a person with sufficient means does not neglect or refuse to provide the support required by a dependent family member.

The Bharatiya Nagarik Suraksha Sanhita, 2023, which came into force on 1 July 2024, contains the principal summary criminal-procedure remedy for maintenance in Sections 144–147. Section 144 provides for maintenance orders in favour of eligible wives, children and parents. Section 145 deals with procedure and jurisdiction, Section 146 concerns alteration of maintenance allowances, and Section 147 provides for enforcement of maintenance orders. These provisions substantially correspond to Sections 125–128 of the former Code of Criminal Procedure, 1973. [1]

The inclusion of children and parents within this framework reflects the recognition that financial dependency can arise at different stages of life. A minor child may be unable to earn because of age, while an adult child with a specified physical or mental abnormality or injury

may remain unable to maintain themselves. Parents may require support because of old age, illness or the absence of independent income.

Nevertheless, the existence of a statutory right does not automatically guarantee effective relief. A maintenance claimant may face delays, difficulty proving the other party's income, repeated adjournments or non-compliance with an order already passed. Such difficulties can be particularly serious when the claim concerns a child's education or an elderly parent's medical treatment.

The objective of this paper is to examine the maintenance framework under Sections 144–147 of the BNSS, with particular emphasis on the rights of children and parents, the principles governing the determination of maintenance, the role of the judiciary and the practical difficulties associated with obtaining and enforcing relief. It also proposes measures to improve the accessibility, fairness and effectiveness of maintenance proceedings.

2. Research Methodology

This paper adopts a doctrinal legal research methodology. It examines the relevant provisions of the BNSS, constitutional principles and leading judicial decisions concerning maintenance under the corresponding provisions of the former Code of Criminal Procedure, 1973.

The analysis focuses on the legal conditions for claiming maintenance, the responsibilities of persons having sufficient means, the procedural framework, the assessment of financial needs and the enforcement of maintenance orders. Judicial decisions are considered to explain how courts have interpreted the objectives of maintenance law and addressed difficulties arising in its practical application.

The paper is based on statutory and case-law analysis. It does not claim to be an empirical study and does not rely on interviews, field surveys or independently collected statistical data. Its conclusions are therefore legal and analytical rather than statistical.

3. Statutory Framework Under The Bnss

3.1 Section 144: Order for Maintenance of Wives, Children and Parents

Section 144 is the core provision governing maintenance towards Wives, Children and Parents under the BNSS. It empowers a Magistrate of the First Class to order a person having sufficient means to provide a monthly maintenance allowance where that person neglects or refuses to maintain a person falling within the statutory categories. [1]

The provision covers four principal categories:

1. A wife who is unable to maintain herself which including a divorced woman who has not remarried but subject to the statutory conditions.
2. A legitimate or illegitimate minor child, whether married or unmarried, who is unable to maintain itself.
3. A legitimate or illegitimate child who has attained majority, other than a married daughter, where the child is unable to maintain itself because of a physical or mental abnormality or injury.
4. A father or mother who is unable to maintain himself or herself.

The statutory scheme recognises that maintenance is based on dependency and the failure to provide necessary support. The claimant must establish the relevant statutory conditions, including the inability to maintain themselves where required and the neglect or refusal of the person against whom relief is sought.

The expression “sufficient means” should not be understood as referring exclusively to a fixed salary. The person’s actual earning capacity, employment, assets and financial circumstances may be relevant, depending on the evidence available. At the same time, the assessment must be reasonable and supported by the material placed before the court.

Section 144 also permits the Magistrate to grant interim maintenance and reasonable expenses of the proceedings while the main application is pending. The provision states that an application for interim maintenance and proceedings expenses should, as far as possible, be disposed of within sixty days from the date of service of notice of the application. This is important because a claimant may be unable to meet immediate living expenses while waiting for the final decision.

The section also permits maintenance to be made payable from the date of the order or, where the Magistrate so directs, from the date of the application. The decision on the relevant

commencement date can materially affect the amount of arrears and the practical value of the remedy.

3.2 Nature and Purpose of Maintenance

Maintenance under Section 144 is a summary statutory remedy. Its principal objective is to prevent neglect and destitution by ensuring that persons with sufficient means provide financial support to eligible dependants.

The remedy available under aforesaid provision which does not replace every other legal remedy available under personal law, matrimonial law or other statutes. Depending on the facts, a claimant may have rights under more than one legal framework. The existence of overlapping remedies, however, requires courts to consider the relevant orders and amounts already awarded so that the final arrangement is fair and duplication is appropriately addressed.

Maintenance should not be viewed as charity. Where the statutory requirements are established, it is a legal obligation enforceable through the process prescribed by law. Equally, a maintenance order should not be used as a punitive measure. The amount must be determined by considering the claimant's needs, the respondent's financial capacity and the circumstances of the case.

3.3 Maintenance of Minor Children

Children are among the most vulnerable claimants under maintenance law because they generally lack the legal and practical ability to provide for themselves. Their needs may include food, clothing, accommodation, education, healthcare, transport and other reasonable expenses associated with their age and circumstances.

Section 144 expressly includes legitimate and illegitimate minor children, whether married or unmarried, where the statutory requirement of inability to maintain themselves is satisfied. The provision therefore focuses on the child's entitlement to support rather than making legitimacy a barrier to the statutory remedy.

The duty to maintain a child should be assessed in a manner that protects the child's welfare. A parent should not be permitted to avoid responsibility merely because the parents are

separated, have a dispute concerning custody or have difficulty communicating with each other. The maintenance question must be considered according to the applicable statutory conditions and the evidence concerning the child's needs.

A child's expenses like educational expenses, medical expenses and also necessary expense which may change as the child grows older. The maintenance amount should therefore be based on a realistic assessment rather than an arbitrary figure unrelated to the child's circumstances.

The law also recognises a particular situation involving a minor female child who is married. Under the proviso to Section 144, the Magistrate may order the father to provide an allowance until she attains majority if the statutory conditions concerning the husband's insufficient means are satisfied. The provision must be read according to its precise terms and applied consistently with the applicable law.

3.4 Maintenance of Adult Children with Disabilities

The obligation under Section 144 is not confined entirely to minor children. It also covers a legitimate or illegitimate child who has attained majority, other than a married daughter, where the child is unable to maintain themselves because of a physical or mental abnormality or injury.

This provision is significant because attaining the age of majority does not necessarily mean that a person has acquired the practical ability to earn a livelihood. A person with a serious disability or injury may require continuing assistance for daily living, medical treatment, rehabilitation and other essential needs.

The claimant must establish the statutory conditions, including the nature of the abnormality or injury and its effect on the ability to maintain themselves. Medical evidence may be relevant, depending on the circumstances. However, the assessment should focus on the actual limitations and financial needs of the person rather than relying only on a diagnostic label.

The statutory category must not be extended beyond its wording. Section 144 does not create an unrestricted maintenance because it entitlement for every adult child who is financially

dependent and unable to maintain themselves. The relevant disability or injury and inability to maintain oneself must satisfy the requirements of the provision.

3.5 Maintenance of Parents

Section 144 recognises the right of a father or mother who is unable to maintain himself or herself to claim maintenance from a person having sufficient means who neglects or refuses to provide support. This provision gives legal recognition to the responsibility owed to dependent parents.

The need for such protection has become increasingly important as families experience migration, changing employment patterns and differences in household arrangements. Some parents may have no income independently like Medical treatment, accommodation, food and personal care can create substantial financial burdens.

The provision does not require parents to remain entirely without resources before approaching the court. Their actual ability to maintain themselves must be proved with evidence and circumstances. At the same time, the respondent's financial capacity must also be considered when determining the appropriate allowance. A claim by an elderly parent or senior citizen should not be treated as a private disagreement between generations also a gap between them. Where the statutory requirements are established, the issue concerns the fulfilment of a legal duty to provide support. The court's task is to determine the entitlement and amount in accordance with the law, rather than to decide which family member is morally superior in the underlying dispute.

4. Procedure And Jurisdiction Under Section 145

Section 145 governs the procedure relating to maintenance proceedings. It provides jurisdictional rules that allow proceedings to be instituted in a district connected with the respondent's location, the place where the respondent or wife resides, or the place where the respondent last resided with the wife or, as applicable, the mother of the illegitimate child, subject to the precise statutory terms. [1]

These jurisdictional provisions are important because maintenance claimants may face practical difficulties in approaching a court far from their place of residence. A parent may be elderly or physically unwell. A person caring for a child may have limited financial resources

and may be unable to travel frequently. Jurisdictional rules should therefore be applied in accordance with the statute in a manner that preserves access to the remedy.

Section 145 also contains procedural provisions concerning the taking of evidence and the conduct of proceedings. Maintenance proceedings are intended to provide a relatively accessible and summary remedy. Their effectiveness would be undermined if they became unnecessarily complicated or prolonged. The requirement of procedural fairness applies to both parties. The claimant must have a genuine opportunity to establish the statutory conditions, while the respondent must have a fair opportunity to contest the allegations and place relevant financial information before the court. A practical difficulty often arises where the claimant does not know the respondent's actual income, because the earnings are received through self-employment or business activities or informal employment or multiple sources. The court must evaluate the available material and determine the matter on the evidence rather than allowing a lack of formal salary records to automatically defeat a legitimate claim.

5. Determination Of Maintenance And Judicial Principles

5.1 Assessment of the Appropriate Amount

The BNSS does not prescribe one uniform monthly amount for every maintenance claimant. Section 144 leaves the Magistrate to determine an appropriate allowance in the circumstances of the case. This approach allows the court to account for differences in financial resources, family responsibilities and actual needs. Relevant considerations may include the claimant's reasonable living expenses, age, health, educational requirements and other necessary expenditure. The respondent's income, earning capacity, liabilities and existing responsibilities may also be relevant. The assessment must be based on the evidence and the circumstances of the individual case.

The amount should be sufficient to provide meaningful support but should also be determined fairly in light of the respondent's actual financial position. An amount that is unrealistically low may fail to meet the purpose of maintenance law, while an amount unsupported by the evidence may create avoidable enforcement difficulties.

5.2 Rajnesh v. Neha

In *Rajnesh v. Neha*, the Supreme Court addressed important issues concerning maintenance proceedings, including financial disclosure, overlapping maintenance claims, the relevant date from which maintenance may be awarded and the need to reduce delay. The Court issued directions intended to promote consistency and transparency in maintenance adjudication. [2] The decision is particularly relevant because courts cannot reliably determine a fair amount if the parties' financial circumstances remain unclear. The hon'ble court also upholds that disclosure of income, assets and liabilities with relevant expenditure can help the court assess the actual financial position of the parties. The judgment also addresses situations in which maintenance is claimed under different statutory provisions. The existence of multiple proceedings should be disclosed, and courts should consider previous orders when determining further relief. This approach helps avoid inconsistent outcomes and ensures that the claimant's needs are addressed without disregarding the respondent's existing obligations.

Although *Rajnesh* was decided under the earlier legal framework, its principles are relevant to maintenance proceedings under the BNSS to the extent that they are consistent with the current statutory provisions and remain applicable.

5.3 Chaturbhuj v. Sita Bai

In *Chaturbhuj v. Sita Bai*, the Supreme Court discussed a purpose of the maintenance remedy under Section 125 of the former Code of Criminal Procedure (section 144 of BNSS). The Court explained that the provision is intended to prevent destitution and vagrancy by requiring a person with sufficient means to support a wife who satisfies the statutory conditions. [3] The judgment give a broader understanding of maintenance law. It demonstrates that the remedy should be interpreted in light of its social purpose rather than reduced to an excessively narrow inquiry into whether a claimant has absolutely no resources.

However, the statutory requirements remain essential. A court must consider the facts of the particular claim and cannot grant maintenance without examining the relevant legal conditions. The decision therefore supports a purposive approach while preserving the need for a legally justified order.

5.4 Bhuwan Mohan Singh v. Meena

In *Bhuwan Mohan Singh v. Meena*, the Supreme Court criticised the delays that frequently affect maintenance proceedings and emphasised the importance of providing effective relief to persons who depend on maintenance. [4] This Judgement find outs the practical problem regarding the maintenance order passed after excessive delay may offer little assistance to a person who needs money for daily living expenses. The purpose of maintenance law is undermined if the claimant must wait for years before receiving effective support.

The decision is especially relevant when considering interim maintenance under Section 144 of the BNSS. Interim relief is intended to address immediate needs while the final application remains pending. Courts should therefore give appropriate attention to interim applications and avoid unnecessary procedural delay.

5.5 Kirtikant D. Vadodaria v. State of Gujarat

In *Kirtikant D. Vadodaria v. State of Gujarat*, the Supreme Court considered the scope of maintenance claims involving a father, mother and stepmother under the former criminal procedure framework. [5]

The decision is relevant to the interpretation of parental maintenance because it illustrates the importance of identifying the persons covered by the statutory provision and examining the precise legal relationship between the claimant and the person against whom maintenance is sought.

The judgment should not be treated as a substitute for the current wording of Section 144. Its relevance lies in the principles developed under the corresponding earlier provision, which must be applied with due regard to the language and requirements of the BNSS.

6. Section 146: Alteration Of Maintenance Allowance

Maintenance is not necessarily a fixed obligation that remains appropriate for the entire period during which it is payable. The financial circumstances of the parties may change after an order is passed. Section 146 permits the Magistrate to alter the maintenance allowance where a change in circumstances is established. It also addresses the effect of decisions of a competent civil court and specified circumstances concerning divorced women who subsequently remarry. [1]

A change in circumstances may arise where the claimant's reasonable needs increase or decrease, the respondent's financial capacity materially changes, or other relevant facts affect the basis on which the original order was made.

The power to alter maintenance is important because an order that was reasonable when first made may become inadequate or excessive over time. For example, a child's educational expenses may increase as the child progresses through school or enters higher education. A parent may also develop a medical condition requiring continuing treatment. In an appropriate case, these developments may be relevant to an application for alteration.

However, a party should not assume that every change automatically entitles them to an increase or reduction. The applicant must establish the relevant change and explain how it affects the existing order. The Magistrate must then determine the appropriate alteration in accordance with the statute and the evidence.

Section 146 promotes flexibility while preserving legal certainty. It allows maintenance orders to respond to changed circumstances without requiring the parties to treat the original amount as permanently unalterable.

7. Section 147: Enforcement Of Maintenance Orders

A legal right becomes meaningful only when it can be enforced. Section 147 provides for enforcement of maintenance orders in accordance with the statutory framework. Where a person fails, without sufficient cause, to comply with an order, the law provides mechanisms for recovering the amount due and imposing the consequences authorised by the provision. [1]

Non-payment can have serious consequences for a claimant. A child may be deprived of educational opportunities or necessary healthcare, while an elderly parent may be unable to meet basic living expenses. Delayed enforcement can therefore defeat the purpose for which maintenance was ordered.

At the same time, enforcement must comply with the statutory requirements. The court must determine the amount due, consider the relevant circumstances and follow the procedure prescribed by law. A respondent should not be subjected to consequences that are not legally authorised, and a claimant should not be left without an effective remedy merely because the order has not been voluntarily obeyed.

Effective enforcement requires timely applications, accurate calculation of arrears and proper judicial attention to repeated defaults. Courts should also distinguish between a genuine dispute concerning the amount due and deliberate non-compliance with a valid order.

The availability of enforcement mechanisms should not be understood as a reason to overlook delay in the original proceedings. Timely determination, realistic maintenance amounts and effective enforcement work together. If any one of these elements is missing, the practical value of the statutory remedy is reduced.

8. Practical Challenges In Maintenance Proceedings

8.1 Delay in Adjudication

Delay remains a major concern in maintenance proceedings. A claimant may require financial assistance immediately, but the final decision may be postponed by repeated adjournments, incomplete documentation or disputes over jurisdiction and income.

8.2 Difficulty in Establishing Income

In some cases, the respondent's income may be difficult to determine because earnings are irregular or arise from business, agricultural activity, contract work or informal employment. The absence of a formal salary certificate should not automatically establish an inability to pay.

Courts must assess the available evidence, including financial disclosures and other relevant material, while avoiding unsupported assumptions. Transparent disclosure can reduce unnecessary disputes and assist the court in determining a realistic allowance.

8.3 Inadequate Maintenance Amounts

An allowance that does not reflect reasonable living expenses may fail to provide meaningful support. The cost of food, housing, education and healthcare varies according to the claimant's circumstances and location.

The court should therefore examine the actual needs of the claimant and the respondent's financial capacity rather than adopting an arbitrary amount. Periodic alteration under Section 146 may be necessary where a material change in circumstances is established.

8.4 Difficulty Faced by Elderly Parents

Elderly parents may face additional barriers, including physical limitations, lack of access to legal assistance and dependence on the very person against whom they must seek relief. Some may hesitate to initiate proceedings because they fear the breakdown of family relationships.

These difficulties underline the importance of accessible legal assistance and clear information about available remedies. A parent's age or limited ability to produce financial records should be considered in the practical management of the proceedings, without removing the need to establish the statutory conditions.

8.5 Enforcement and Accumulated Arrears

Even where a maintenance order is obtained, repeated non-payment may result in accumulated arrears and further proceedings. A claimant who depends on monthly support may find that recovery after a long delay does not meet immediate needs.

Effective enforcement requires timely attention to default, accurate records of payments and arrears, and appropriate use of the statutory mechanisms. Clear communication of the terms of the order can also reduce disputes about the amount payable and the date from which it is due.

9. Suggestions For Improving The Maintenance System

First, maintenance proceedings should be managed in a manner that gives appropriate priority to interim relief. Section 144 expressly recognises the importance of interim maintenance and provides that applications should, as far as possible, be disposed of within sixty days from service of notice. This statutory direction should be implemented through effective case management and the avoidance of unnecessary adjournments.

Second, financial disclosure should be clear and meaningful. Information concerning income, assets, liabilities and existing maintenance orders assists the court in determining a fair allowance. The principles in *Rajnesh v. Neha* framed a guidance on it.

Third, courts should give reasoned decisions on the amount of maintenance. The order should reflect the claimant's reasonable needs, the respondent's financial capacity and other relevant circumstances. A reasoned assessment makes the order more transparent and facilitates compliance and enforcement.

Fourth, legal awareness and access to assistance should be strengthened for children, caregivers and elderly parents. Information about jurisdiction, required documents, interim relief and enforcement can help claimants approach the appropriate forum without unnecessary confusion.

Fifth, enforcement applications should be handled efficiently. A maintenance order should not become ineffective merely because the respondent does not comply voluntarily. Finally, maintenance orders should be reviewed when a material change in circumstances is established. Section 146 provides the legal mechanism for alteration. Its careful use can ensure that the allowance remains appropriate without requiring the parties to treat a once-reasonable amount as permanently fixed.

Conclusion

Sections 144–147 of the Bharatiya Nagarik Suraksha Sanhita, 2023 provide an important statutory framework for maintenance of eligible wives, children and parents. These provisions recognise that persons who are unable to maintain themselves should not be left without support when a family member having sufficient means neglects or refuses to fulfil the applicable legal obligation.

For children, maintenance is closely connected with basic needs, education, healthcare and healthy development. For parents, it provides a legal remedy where age, illness or other circumstances make independent maintenance difficult. The statutory framework also recognises that financial circumstances may change and provides for alteration and enforcement of maintenance orders.

Judicial decisions under the former Code of Criminal Procedure, particularly *Rajnesh v. Neha*, *Chaturbhuj v. Sita Bai*, *Bhuwan Mohan Singh v. Meena* and *Kirtikant D. Vadodaria v. State of Gujarat*, assist in understanding the purpose and practical operation of maintenance law. Their principles must be applied with proper regard to the current wording of the BNSS.

The effectiveness of maintenance law cannot be measured solely by the number of orders passed. It must also be assessed by whether claimants receive timely, adequate and enforceable support. Delays, inadequate financial disclosure and repeated defaults can weaken the protection the statute intends to provide.

A fair maintenance system must balance the genuine needs of the claimant with the financial capacity of the person liable to pay. It must also ensure that statutory requirements are proved, decisions are reasoned and enforcement remains within the law. Ultimately, maintenance is not merely a financial remedy; it is a legal means of protecting dignity and reducing the risk of destitution among dependent family members.

References

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[2] Rajnesh v. Neha, (2021) 2 SCC 324.

[3] Chaturbhuj v. Sita Bai, (2008) 2 SCC 316.

[4] Bhuwan Mohan Singh v. Meena, (2015) 6 SCC 353.

[5] Kirtikant D. Vadodaria v. State of Gujarat, (1996) 4 SCC 479.

[6] Government of India. The Code of Criminal Procedure, 1973, Act No. 2 of 1974, Sections 125–128.

[7] The Constitution of India, Article 21.