PREFACE

The family is by far the most ancient as also the most important of all the social institutions created by man. Well known philosophers and researchers, like Engles and Morgan, have traced the evolution of the state to the origin of the family, especially the patriarchal family. Barring the pre-historic savage communities, no civilized society has ever existed without the institution of the family. The father and the mother, or the husband and the wife, and their children have been the three component parts of this institution. That is why down the ages, myriads of socio-religious rituals, myths, and customs have evolved round the concept of marriage and family. The psychological, economic, and social functions performed by the family are such that no other institution can possibly replace it, at least not in the foreseeable future.

But with the advent of industrialism and the materialist and individualist values fostered by it the sacred institution of the family has increasingly come to suffer tensions and threats. Recent years have witnessed a phenomena increase in the number of broken marriages, divorces and other matrimonial disputes. This instability of the family ugurs disaster for the society at large. For, as psychologists tell us, vagrancy and destitution, which naturally follow a broken marriage, are the breeding grounds for crime, immorality and violence.

When a marital relationship goes awry, the man,
the wife and the children always suffer an emotional and, quit often, also an economic trauma. All personal laws are aimed at mitigating the misery and sufferings caused by this traumatic experience.

It is a paramount concern of the society to ensure that the wife or husband, the children, and the aged and infirm parents are maintained. Neither social morality nor any personal law can accept the position that during legal separation of the spouses or even after the dissolution of the marriage the needy spouse or children or aged parents should be left to fend for themselves. The law allows a person to opt out of a marriage if it has become impossible to continue the matrimonial relationship. This can be done through a decree of divorce or nullity under the personal law which applies to the person concerned. But the law certainly does not permit one to forsake the social and moral obligations which necessarily follow once the holy knot of matrimonial alliance is tied. The law comes to the rescue of the needy spouse, children or parents through the machinery set up under the maintenance provisions of the appropriate personal law and those of the Code of Criminal Procedure, 1973.

Naturally, therefore, the issue of alimony and maintenance is bound to be discussed and debated in any legal proceeding arising out of matrimonial disputes. Needless to say, these discussions and debates ought to facilitate and ensure timely and fair decisions by the courts to provide succour to the unfortunate victims of the
disintegrated families. But a casual glance at the judicial process relating to maintenance provisions in India would show that the process of claiming maintenance 'is indeed exasperating, like climbing a hill where always a new summit appears'. Apart from the generally cumbersome and time consuming legal procedure of courts in this country, the reasons for the sorry state of affairs are inherent in the law itself. The provisions of alimony and maintenance to the wife, children and the parents are enshrined in the codified personal laws of the Hindus, Christians, Parsis, Jews and Muslims. Besides these personal laws the Code of Criminal Procedure of 1973 has enacted maintenance provisions which apply to all citizens irrespective of their religion, caste or community. The complexity of the multi-tier law of maintenance and inaccurate draftsmanship of the statutory provisions make for the ambiguity which has led the different High Courts to take divergent and conflicting views of these provisions. The result is an all round confusion and uncertainty.

When an aggrieved person seeking maintenance knocks at the doors of a court in India today, one is never sure whether (a) she or he is entitled to claim maintenance; (b) if yes, to what amount of maintenance (c) when and from which date and by which court will it be awarded? There is uncertainty and lack of precision on each of these vital questions. Thus the law of maintenance as it exists today suffers from many infirmities and important reforms and
changes are urgently needed for in order to dispense expeditious and effective relief to the suffering spouse, children or aged parents. Legal luminary and students of law, and the general public rightly feel concerned about these issues. It is this wider concern which motivated the author of the present study to undertake an in-depth, critical and comprehensive analysis and evaluation of the provisions of maintenance under the Indian Personal laws and the Criminal Procedure Code.

Maintenance jurisprudence regulates the most vital, social and moral functions of our life. Social ethics, individual morality as well as law enjoin upon a spouse a duty to maintain the other spouse, and the parents to support the children; and the children to nurse and maintain the aged parents. The law of maintenance is inspired by the lofty object of protecting the neglected wives, discarded divorcees, abandoned children, and hapless parents. The great legal luminary Justice Krishna Iyer has rightly observed 'the provisions relating to maintenance are a measure of social justice and specially enacted to protect women and children and fall within the Constitutional sweep of Article 15(3) reinforced by Article 39.'

The thesis is divided into five parts. Each part embrace distinct field of law of maintenance. Part-A, 'Historical Perspective', incorporates Chapter-I which is devoted to Jurisprudence of Maintenance; Its meaning, Importance and Evolution. In this chapter, besides tracing the history of ancient Hindu law, the concept of alimony and
maintenance in England has been traced. Part-B, 'Right of
the Wife to Maintenance under the Indian Personal Laws-A
Critical Evaluation of Present Statutory Provisions of
Maintenance and Judicial Approach' consists of six chapters
namely Chapters II to VII. The first four chapters, II,
III, IV and V deal with the provisions of Hindu Law of
maintenance to the Hindu wife which are scattered in two
modern statutes i.e. The Hindu Marriage Act, 1955 and The
Hindu Adoption and Maintenance Act, 1956. The majority of
Indian Citizens are governed by these Acts as the Acts have
been made applicable not only to the persons belonging to
Hindus by religions but to persons belonging to the Sikh,
Jain and Buddhist religion also. The definition given to
the term 'Hindu' in both the Acts is exactly the same. Chapter
II, 'Hindu Wife's Right of Maintenance-A Study of Ancient
Law and Critical Evaluation of Statutory Provisions of
Maintenance under Modern Hindu Law and Judicial Approach'
comprehends the position and right of a Hindu wife under
ancient codified as well as uncodified law and the Scheme
of the provisions of maintenance under the Hindu Marriage
Act, 1955. Chapter III is 'Maintenance Pendente Lite and
Expenses of the Proceedings - A Critical Evaluation of the
Provisions of Section 24 of the Hindu Marriage Act, 1955 and
Judicial Approach'. Chapter IV, is titled 'Permanent
Alimony and Maintenance-A Critical Appraisal of the
Provisions of Section 25 of the Hindu Marriage Act, 1955 and
Judicial Approach'. A Hindu wife has also the privilege to
Provisions', consists of two Chapters. Chapter X is 'Maintenance To Children; An Indepth Study Of Provisions Under The Code Of Criminal Procedure, 1973 And Other Statutes'. Chapter XI is titled 'Parents'Rights To Maintenance: A Legal Enforcement Of Filial Piety'. Thus, in view of the high importance of the issues at stake the entire substantive and procedural law on maintenance has been x-rayed. All facets of the maintenance jurisprudence have been thoroughly examined. An attempt has been made to suggest reforms and improvements. Moreover the entire case law, particularly the conflicting decisions of the different High Courts have been analysed and conclusions sought to be drawn. It is expected that the study would contribute a humble bit to clear the mist of confusion and to achieve a holistic perception of the maintenance jurisprudence.