

## Analysis of Maintenance of wives, children and parents

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### Abstract

Legal provisions regarding order for maintenance of wives and children under section 125 of the Code of Criminal Procedure, 1973. The word 'Maintenance' is not defined in the Code of Criminal Procedure, 1973. Chapter IX of the Code of Criminal Procedure deals with provisions for maintenance of wives, children and parents. 'Maintenance' in general meaning is keeping something in good condition. 'Maintenance' in legal meaning is money (alimony) that someone must pay regularly to a former wife, husband or partner, especially when they have had children together. It is the duty of every person to maintain his wife, children and aged parents, who are not able to live on their own.

**Keywords:** Wives, children, parents.

**Introduction:** Maintenance is a source of social justice in itself. It is a man's fundamental duty to provide for his wife, children, parents, close relatives, and other dependents if they are unable to maintain for themselves. The goal of maintenance is to prevent immorality and destitution, as well as to improve women's and children's economic circumstances. In India, there are two types of maintenance laws that apply to Hindu women. The first category considers child support in the event of a divorce or other matrimonial remedy, such as nullity of marriage. In the first group, maintenance can be claimed under Section 25 of the Hindu Marriage Act 1955, while in the second category, maintenance to the wife, parents, and children can be claimed under Section 125 of the CrPC and the Hindu Adoption and Maintenance Act, 1956. In this paper an attempt has been made to ascertain the nature and scope of the alimony and Maintenance of wife, widow and dependent under Section 125 of CrPC. Also, an attempt has been made to bring out the lacunae in the core maintenance laws governing the head of the Hindu family and sufficient remedies have been provided for the same.

Section 125 of CrPC is a means to provide a speedy, inexpensive and effective remedy against persons who refuse or neglect their duty to maintain persons dependent on them. The section discharges a social function in order to achieve and maintain societal balance. It also comes under Article 15 (3), which is further reinforced by Article 39. It is an important section that deals with women's human rights and are a legal instrument of social relevance that is used to uphold the rights of the weaker section of society.<sup>[1]</sup> They are, in a way, aimed at preventing starvation and vagrancy relating to the commission of crimes.<sup>[2]</sup>

### **Who can claim and get maintenance?**

Section 125 of Cr.PC deals with "Order for maintenance of wives, children and parents". According to Section 125(1), the following persons can claim and get maintenance:

- Wife from his husband,
- Legitimate or illegitimate minor child from his father,
- Legitimate or illegitimate minor child (physical or mental abnormality) from his father, and
- Father or mother from his son or daughter.

### **CONCEPT OF MAINTENANCE**

The right to maintenance is built on the concept of an undivided family, in which the head of such a family is bound to maintain the person who is unable to produce a decent living and enjoy the necessities of life that he or she is reasonably expected to enjoy. The concept of maintenance was built to make such a person's life possible and autonomous. Maintenance is a legal obligation that a person owes to his dependent family, and it binds both the person and the

property. The term 'maintenance' in Indian law denotes to a claim to food, clothing, and shelter, which is often provided to the wife, children, and parents. It's a measure of social justice and the outcome of a man's natural duty to support his wife, children, and parents when they can't maintain themselves. Maintenance has been a priority for the entire society, not just the weaker sections. When a person, despite having ample wealth, is unable to maintain his dependents, he is compelled to turn to the state for help or to pursue a career that is despised or outlawed by society and is detrimental to the society's interests. Thus, in the acknowledgement of this and with the purpose to prevent the outcomes that may tend to arise out of poverty and destitution a right, parallel to one provided under personal laws, and is also made available under Criminal Jurisdiction in India. The object of maintenance is to prevent immorality and destitution and ameliorate the economic condition of women and children. The persons who are qualified for maintenance under the Hindu Adoptions and Maintenance Act (HAMA), 1956 are wife, widowed daughter-in-law, children, aged parents and dependants as enumerated in Section 21 of the Act. Whereas, under the Muslim law, the persons entitled to maintenance are wife, young children, the necessitous parents, and other necessitous relations within the prohibited degrees. The Muslim Law of maintenance is based on the Muslim personal laws and the law enactments such as the Indian Majority Act, 1875, the Criminal Procedure code 1973, Muslim Women (Protection of Rights on Divorce) Act, 1986.

The provisions of Section 125, Cr. P.C., 1973 apply and are to be enforced irrespective of whatever maybe the personal law by which the persons in India are governed. Simultaneously, it must be understood that personal laws of the parties concerned, Hindus, Muslims, Christians are to be duly cared of as the same are important to decide the validity of the marriage tie, if any, (existent or not) and so cannot be completely set aside from due consideration.

#### MAINTENANCE UNDER HINDU LAW

Many Hindu sages of Ancient India including Manu and Brihaspati believed maintenance of certain persons is a personal obligation. "A man may give what remains after the food and clothing of family. The one (giver) who leaves his family unfed may taste honey at first but afterwards finds it poison." MIT Akshara, which is one of the most important and oldest school of Hindu Law says that "Where there may be no property but what has been selfacquired, the only persons whose maintenance out of such property is imperative, are aged parents, wife and minor children." The provisions of maintenance under Hindu law finds its roots in (a) the Shastric Hindu Personal laws which have its underlying foundations in the Dharmashastra. With the passage of time the need for codification of Hindu Law with respect to marriage, adoption, succession and maintenance was felt and thus two principal acts- (1) The Hindu Marriage Act and (2) The Hindu Adoptions and Maintenance Act, 1956 were promulgated. However, Modern sources of Hindu Law consists of three main sources such as

- (i) Equity, Justice and good conscience
- (ii) Precedents
- (iii) Legislation. Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 defines maintenance.

This section says, "Maintenance include- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment, (ii) in the case of an unmarried daughter, also the reasonable expenses of an incident to her marriage, (c) "minor" means a person who has not completed his or her age of eighteen years." In State of Haryana v. Smt. Santra<sup>6</sup>, it was held that it is a liability created by Hindu Law and arises out of jural relation of the parties. Section 18 of the HAMA, 1956 deals with the maintenance and separate residence of wife.

## **MAINTENANCE UNDER CRPC**

The provisions of the Code of Criminal Procedure, 1973, bind a person to fulfil the moral obligation to society that he owes to his wife, children, and parents. The duty is unquestionably lawful and binding on the individual. The CRPC's provisions are secular, harmless, and all-encompassing in nature, and they apply to all groups in India, regardless of religion, caste, or creed. Whatever personal laws the individual persons concerned are guided and governed by the provisions of Section 125 of the CRPC are enforceable. Maintenance can be claimed under the personal laws of people of all different faiths, and proceedings under such personal laws are civil in nature; however, proceedings initiated under Section 125 of The CRPC are of a summary nature, and apply to everyone regardless of caste, creed, or religion. The provision included in Chapter IX of The CRPC tries to prevent the neglected wife, parent, and children from being abandoned. The CRPC's Section 125 offers a quick remedy for famine and civil damage. It's not the same as a husband's civil liability. It substitutes for a straightforward technique with few complexities. It gives effect to a man's fundamental duty to support his wife, children, and elderly parents who are unable to maintain themselves. The underlying principle behind the maintenance stance under Section 125 of the CRPC is that no wife, young children, or elderly parents should be left without and subjected to utter strain of wants, causing them to be persuaded to commit crimes, etc.

### **Scope of Section 125 of CrPC**

Maintenance under the law is defined as an amount of money paid to a dependent person such as a wife, child or parent so that they can support themselves financially. It is also defined under Section 2(b) of the Maintenance and Welfare of Parents and Senior Citizen Act, 2007, as a term that “includes provision for food, clothing, residence and medical attendance and treatment.”

Generally, such matters of maintenance are dealt with the personal laws of the religion to which the parties belong. However, this section is applicable to all religions and the personal law under it holds no value in terms of authority<sup>[3]</sup>, although, it is relevant to establish the validity of a marriage and cannot be excluded altogether.<sup>[4]</sup> There is no conflict between Section 125 and provisions of any personal law on maintenance. It may however be taken into consideration by the magistrate when fixing the allowance to be paid if some maintenance has already been awarded under personal law. Otherwise, it is distinct and separate from the personal laws of the parties and is truly secular in nature.<sup>[5]</sup>

### **Who Can Claim Maintenance Under Section 125 of CrPC**

#### **Wife**

Any wife, whether of major or minor age, who is unable to maintain herself is entitled to maintenance under Section 125 (1) (a). According to Explanation (b), the term ‘wife’ under this section included an un-remarried divorced wife. Earlier, till the judgment in the Shah Bano Begum case, a divorced wife was not entitled to maintenance and this caused a lot of injustice to women, especially of the Muslim community. The marriage in any of these cases has to be valid according to law. A woman despite the unfortunate situation, is in a relationship with a married man is not entitled to maintenance, this may cause injustice but the Supreme Court stated such inadequacy can only be cured by the legislature.<sup>[8]</sup> Strict proof of marriage is not absolutely essential, since this section is meant to be a tool for social justice and therefore given to a broader interpretation, however, High Courts and the Supreme Court went back and forth on this issue till the Supreme Court decide that a man and a woman living together as husband and wife for a reasonably long period of time, maybe considered under this section as a valid proof for married life and shall be treated as such for matters of maintenance.<sup>[9]</sup> If a husband remarries, the first wife still comes under the definition, is entitled to maintenance even if the second marriage

is valid under personal law, even if she has consented to the marriage. Proof of neglect in such a case is not necessary for the wife to make her case for maintenance.<sup>[10]</sup>

There are manners where this maintenance can be excepted. Under subsection (4) of Section 125 the court need to ensure that the husband has sufficient means to maintain his wife, if he doesn't, then this section does not apply. Furthermore, the wife should not be living in adultery separately, unless according to the court her refusal to live with her husband is justified. This applies even if the separation is mutual. If a marriage is void or annulled under Section 12 of the Hindu Marriage Act, a wife is not entitled to maintenance.<sup>[11]</sup>

### Child

A child who is still a minor according to the Indian Majority Act, 1875, i.e. a person who has not attained the age of 18 years, whether they are legitimate or illegitimate, or married or unmarried, are entitled to claim maintenance under Section 125 (1)(b). Furthermore, if a minor girl's husband is unable to support her, then the father of such a girl is required to maintain her according to the Proviso in this section. The child has to have been born for such a claim to exist, maintenance of a fetus when the woman is still pregnant does not come under this section. Even in a case where the child is under someone else's custody, the father of such a child still has the obligation to maintain them.

The maintenance of a child under this section is based on the Paternity. This is irrespective of the legitimacy or illegitimacy of the child, therefore a child whose parents are not legally wedded is still entitled to maintenance by law. If paternity cannot be established then the child has no claim.<sup>[12]</sup> The child may be adopted or natural-born.

After attaining majority, a child, whether legitimate or illegitimate as long as they are not a married daughter can claim maintenance under Section 125 (1)(c), by reason of physical or mental abnormality or injury and the child is unable to maintain themselves pertaining to such reason. A major unmarried daughter not suffering from any mental or physical ailment cannot claim maintenance under Section 125 CrPC.<sup>[13]</sup>

### Parents

According to Section 125 (1) (d), a mother or a father who is unable to support themselves is entitled to claim maintenance under this section from their children. Although the word 'his' is used, it applies to both male and female children of the parents. Indian society casts a duty on the children to maintain the parents and this social obligation applies equally to a daughter.<sup>[14]</sup>

It is not clear whether the interpretation of the words 'father' and 'mother' include adoptive father and mother, and stepfather and mother, or not. Bombay High Court stated in a judgment that while the term father under Section 3 (20) of General Clauses Acts includes an adoptive father, the term 'mother', with regard to the section's object and intention, would have to be given its natural meaning and will not include a stepmother.<sup>[15]</sup> Supreme Court later in a judgment liberally construed the section and stated that a stepmother with no child of her own and whose husband has expired, or if her husband is living, is unable to support her then she is too is unable to support herself, can claim maintenance from her stepson.<sup>[16]</sup>

The word 'parent' has not been used in subsection (4); this has been interpreted by the High Court of Andhra Pradesh in **N. B. Bhikshu v. State of Andhra Pradesh**<sup>[17]</sup>, to mean that only a legitimate child has the obligation to maintain their parent and the parent may claim against the unfulfillment of such obligation against any child if there are more than one.

### CONCLUSION

In this preparation of this thesis, after careful considerations of the maintenance laws of Hindu community and by due comparison, effective measures will have to be obtained to find out ways and means how to eradicate lacunae, gaps, anomalies in maintenance laws. It will have to find





out how suggestions can be found out regarding uniform of maintenance laws in India and so, if at all it can be effectively if so, in what positive way, to bring uniformity and fixity of maintenance laws. No doubt, Parliament of India can bring necessary legislations but administrative good wishes should be there. More and more judicial activism in this appeal may be welcome. A committee of eminent jurists in India may assist Parliament in this behalf to suggest uniformity and to eradicate gaps, anomalies, laches and lacunae.

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