



Analysis of Maintenance of wives children and parents

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Abstract: Section 125 of the code of criminal procedure provides that any person having sufficient means to maintain himself cannot refuse the maintenance to the wife, children, and parents if they are unable to maintain themselves. After a party invoked Section 125 of the Code, the court may order the respondent, that is the husband, to provide monthly maintenance to his wife who is unable to support herself. For the purpose of giving maintenance to the wife, the husband has to be sufficient enough to maintain his wife after the separation and at the same time, the wife must not be doing adultery or living separately with her husband without any sufficient reasons. Even if they live separately with mutual consent, then also the wife will not be entitled to any type of maintenance. Whenever a judgment passes in favor of the wife, the court must ensure that the husband has sufficient means to provide maintenance. The court is also required to make sure that the wife after the separation does not have sufficient money to support herself.

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Introduction: 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.

In today's legally advanced society, every human being has the right to enjoy his or her rights purely on the grounds of being human which is provided by the rule of law. At the very outset, the right of any human being is based on mankind's increasing demand for a civilised society. Despite the presence of many rights and laws to protect them, the reality is far from this truth, there are provisions but to avail the same one has to suffer many hardships too. Women, children and elderly people are the most affected by this.

Though women, children and elderly people are considered to be most delicate and in much need of protection, these are in fact in the ones whose rights are being encroached everyday, everywhere in the world and their protection must be sought with paramount importance. The notion of 'maintenance' in India is covered both under Section 125 of the Code of Criminal Procedure, 1973 (Section 125) as well as the personal laws. This idea further gets its roots from

Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (the 'Constitution').

In Indian law, the term 'maintenance' includes an right to food, clothing and shelter, being available to the wife, children and parents. It is a part of social justice and the natural duty of a man to maintain his wife, children and parents, when they are unable to maintain themselves. The phenomenon of maintenance is to prevent immorality and destitution and ameliorate the weak economic condition of women and children.

Persons entitled to claim maintenance: The following person is entitled to claim maintenance as per section 125(1) of CrPC, under some circumstances:

Wife: If any person as per Section 125(1) (a) of the Code have sufficient means but neglects or refuses to maintain his wife, who is not able to support herself, a Magistrate of the first class may, upon proof of such refusal or neglect, direct such person to give a monthly allowance for his wife's maintenance at such monthly rate the Magistrate deems fit, and to pay the same to such person as the Magistrate may direct from time to time. Here 'wife' includes a woman who has been divorced or has obtained a divorce from her husband and has not remarried.

'Wife' for the meaning of Section 125 means a legally married woman. As per Section 125(1)(a) of CrPC, a maintenance allowance could not be given to every wife who is neglected by her husband or whose husband deny to maintain her, Instead, this can only be given to a wife who is unable to support herself but not to a wife who is maintaining herself with a certain

difficulty. By the phrase ‘unable to maintain herself’, it is not meant that she must be completely destitute and should be first on the street, should beg and be in worn-out clothes, and then only she will be entitled to file an application under Section 125 of the Code.

Mohd. Ahmed Khan v. Shah Bano Begum, 1985 (2) SCC 556: In this case, it is declared that a Muslim husband with sufficient means must provide maintenance to his divorced wife who is not able to maintain herself. Such a wife is entitled to get the maintenance even if she refuses to live with the Muslim husband because he has contracted another marriage within the limits of four wives allowed to him by the Quran.

The Supreme Court Bench held that a Muslim divorced woman who cannot maintain herself is entitled to maintenance from her former husband until she remarries.

They dismissed the plea that maintenance is payable for the iddat period only. The judges also rejected the contention that deferred Mahr is a payment on the wife’s divorce and thus such payment under the personal law excludes the payment of any maintenance by the husband to the wife. The Supreme Court held that in case of any conflict between personal law and Section 125, then it is clear from the language of Section 125 that it overrules the personal law.

Child: As per Section 125(1)(b) of the Code, if any person who have sufficient means but refuses to support his legitimate or illegitimate minor child, whether married or not, who is unable to maintain themselves or according to Section 125(1)(c) of the Code, his legitimate or illegitimate child (not a married daughter) who has reached majority, where such child due to any physical or mental abnormality or injury are not able to maintain themselves. A magistrate of the First class upon finding such neglect or refusal may order such person to grant a monthly allowance for the maintenance of such child, at such monthly rate as the magistrate deems fit, and to pay the same to such person as the Magistrate may direct from time to time. Here ‘minor’ means a person who does not attain the age of majority under the provisions of the Indian Majority Act, 1875.

Father or Mother: According to Section 125(1)(d) of the Code, if any person who has sufficient means, but neglects or refuses to maintain his father or mother, not able to support himself or herself, a Magistrate of the first class may upon finding proof of such neglect or refusal may order such person to provide a monthly allowance for the maintenance of his parents, at such monthly rate the Magistrate deem fit, and to pay the same to such person as the Magistrate may direct from time to time.

The daughter whether she is married or unmarried will also be liable to maintain the parents.

OBJECT OF SECTION 125

The procedures under these sections are not punishing in nature. The motive isn’t to rebuff an individual for disregard to keep up those whom he will undoubtedly keep up however to forestall vagrancy by upholding obligation by method of synopsis strategy to give an expedient solution for the individuals who are in trouble.

This is a common arrangement as it doesn’t make any differentiation between people having a place with various religions or stations and it has no relationship with individual laws of the gatherings. In Mohd Ahmed Khan v. Shah Bano Begum, the SC held that that the provisions of section 125 applies to all .

The rights of a destitute wives or a minor claiming preservation on this chapter and the treatments furnished are essentially civil right. The apex court defined section 125 of the code of criminal procedure, 1973 as a measure of social justice and specially enacted to protect women and children falls within the constitutional sweep of article 15(3) and reinforced by article 39.

The primary target is to forestall vagrancy by method of technique to give a rapid solution for the individuals who are in torment. The object of the provision being to prevent vagrancy and destitution, it has been found by us that what is really required by the wife is to maintain a way of life which is neither sumptuous nor penurious, yet is unassumingly predictable with the status of the family.

PURPOSE OF SECTION 125

The purpose of enacting section 125 of the code is not recognized or created as a right as such in favour of a wife. It is intended to ameliorate social problem which concerns destitution or vagrancy. “The primary object of the section is to prevent starvation and vagrancy of person and enable a discarded wife and a helpless child to get the much needed and urgent relief in one or the other form that is convenient to them”.

ENTITLED PERSONS WHO CAN CLAIM AND GET MAINTENANCE

Section 125 of Cr.P.C deals with order of maintenance of wives, children and parents. Under The Cr.P.C., the following can claim and get maintenance.

1. Wife from her husband.
2. Legitimate or illegitimate minor child from his father.
3. His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain itself.
4. His father or mother from his son or daughter.

ESSENTIAL CONDITION FOR INVOKING SECTION 125

The right of a wife for maintenance is not an absolute right under the section 125 Cr.P.C, the very same is circumscribed by the fact that she is unable to keep up herself and further the spouse having adequate methods ignored or wouldn't look after her.

No doubt, there is a clear distinction between the locus standing or competence to file a petition for maintenance under section 125 of the code by any of the person illustrated in the section and there being entitled on merits to particular amounts of maintenance there under.

However the premise for both is essentially the existence or otherwise of their separate income or means of support besides other factors stipulated under this section. Legitimacy of the marriage with the end goal of outline continuing under segment 125 Cr.P.C is to be resolved based on the proof welcomed on record by the parties.

The standard of proof in the marriage in such proceedings is not as strict as is required in the trial of offence under section 494 IPC. If the claimant in the proceeding under section 125 of the code succeed in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can revert the presumption.

That the contention is not proved by leading necessary evidence. Once it is admitted that the marriage procedure was followed then it is not necessary to further probe into whether the set procedure was complete as per the Hindu rights in. the proceeding under section 125 Crpc.

WIFE

A woman is considered as the "wife" only if her marriage with the man is legally valid. The Kerala High court in- Mambekkattu NANU v. VAS- ANTHA observed that it only on the strength of extended definition of the expression "wife" occurring in explanation (b) to section 125 of the code, that she is entitled to claim maintenance as a divorced wife.

In the case of CHANMU- NIYAV.VIRENDRA SINGH, the Supreme court has de- fined "wife" and includes even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, strict proof of marriage should not be the precondition of maintenance under section 125 of Cr. P.C.

In the case of SIRAJ- MOHMEDKHAN JANMO- HAMADKHAN V. HAFI- ZUNNISA YASINKHAN, the Supreme Court held that maintenance can be al- lowed to the wife when her husband is impotent.

A wife can guarantee and get upkeep from her better half in the accompanying conditions.

1. If she is divorced by her husband.

2. If she has obtained divorce from her husband.
3. If she has not remarried.
4. If she is not able to look after herself.

A wife cannot claim and get maintenance from her hus- band in the following condi- tions.

1. She is living in adultery.
2. She refuses to live with her husband without any valid reasons.
3. She is living separately from her husband by mutual consent.

LIVE-IN RELATIONSHIP

Domestic relationship in the nature of marriage. The Supreme Court observed that for a relationship in the nature of marriage-

- a. The couple must hold themselves out to society as being akin to spouses.
 - b. They should be of legal age to marry.
- They must be otherwise qualified to enter into legal marriage including being unmarried.
 - They must have lived together as per their will and held themselves out to the world as being a kin to spouses for a significant period of time. Further Supreme Court ruled that not all Live-In-Relationship will amount to a relationship in the nature of marriage to get the benefit the conditions mentioned by the court must be satisfied and this has to be proved by evidences.

LEGITIMATE OR ILLEGITIMATE MINOR CHILD

Male and female kids, independent of whether they are brought into the world inside or outside the legitimately substantial marriage of the dad and mother can guarantee Maintenance.

SON

'Minor' means a person who, under the provision of section 3 of the Indian Majority Act 1875 is deemed not to attained his majority I.E above the age of 18 years. Minor son (legitimate or illegitimate) is entitled to get maintenance under section 125 of Cr.P.C.

DAUGHTER

If minor daughter (legitimate or Illegitimate) is unmarried, then she is entitled to get maintenance from her father and if she is married, then she is also entitled to get maintenance from her father but the Magistrate has to be satisfied that her husband has not essential and sufficient means for the maintenance of his minor wife.

In the case of SHAHBUDDIN V. STATE OF UP a minor daughter attaining majority during pendency of the application for maintenance was held entitled to maintenance up to the date of majority.

MOTHER AND FATHER

Both the mother and the dad, regardless of whether normal or assenting, can guarantee upkeep from any at least one of their youngsters. Girls are additionally obligated to pay support to their mom and father. A

stage mother can guarantee support just in the event that she is widow and doesn't have characteristic conceived girls or children.

In the case of PANDURANG BHAURAO PABHADE V. BABURAO DABHADE, Bombay High court has held that the father or mother can claim maintenance under section 125(1)(d) if he or she is unable to maintain himself or herself. But it is also important that if parents claim maintenance to their children, children must have sufficient mean to maintain their parents and yet neglects or refuse to maintain the father or mother.

SECTION 126 PROCEDURE: PERSONAL PRESENCE

Section 126(2) of the code provides as to under what circumstances the evidence can be recorded when the non-applicant is not personally present. With the permission of the court, the personal presence (including recording of evidence) of the court will proceed in the presence of with in sub section (2) of section 126 of the code shows to some extent that the non-applicant is bound to remain present on every hearing of the case (unless his presence is dispensed with) and it is this which may go to show that the proceeding under section 125 of the code to some extent, are of quasi-judicial nature.

It has been held in ARUN KUMAR V. CHANDAN BAI, that if the non-applicant is absent, but his counsel is present, evidence can be recorded in the presence of the counsel. Such recording of the evidence is quite legal.

JURISDICTION

In a proceeding under section 126 of the code of Court has jurisdiction to entertain the application where the applicant resides. The question regarding the jurisdiction of the Court to entertain the petition of the wife and daughter for maintenance in KUMUTHAN V. KAMNAPPAZ it was held that the husband was living within the jurisdiction of the court Trichy, the court at Trichy had jurisdiction to entertain the maintenance petition.

The Supreme Court observed that the court below have failed to take note of the provisions contained 126 of Cr.P.C. Under the said section it is permissible for proceeding under section 125 to be taken against a person in any district.

Also, recently Hon'ble Supreme Court in the case of Rajnesh V. Neha, 2020 SCC Online SC 903 The bench of Justice Indu Malhotra and R. Subhash Reddy, JJ has framed guidelines on the issue of maintenance of wife, covering overlapping jurisdiction under different enactments for payment of maintenance, payment of Interim Maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and enforcement of orders of maintenance.

The directions came in a case which revealed that the application for interim maintenance under Section 125 Cr.P.C. has remained pending before the Courts for seven years now, and there have been difficulties encountered in the enforcement of orders passed by the Courts, as the wife was constrained to move successive applications for enforcement from time to time.

WILFUL NEGLECT OF COURT: EX PARTE ORDER CAN BE PASSED

Under section 126 of the code the Magistrate is empowered to proceed to hear and determine the application under section 125 of the code, ex parte if he is satisfied that the person against whom the maintenance order is proposed to be made is wilfully avoiding service count of change in circumstance of pay, and consequently paying or receiving maintenance and party is entitled to move an application for alteration of the order of maintenance where there is such a change of circumstances.

However, rise in the cost of living is certainly a change in circumstances and changes must be in circumstances themselves and not on proof already existing circumstances themselves and not on proof of already existing circumstances on record.

Principles and Acts governing maintenance

Joint family has been a significant feature of the Hindu society since Vedic ages. In a joint family, it is the duty of the male members to earn money and provide for the needs of other members of family such as women, children, and aged parents. In Manu, it has been said that wife, children, and old parents must be cared for even by doing a hundred misdeeds. Since in the social platform of Hindu society the joint family looms large, the law of maintenance has a special essence in Hindu law. All members of a family, whatever be their living status and whatever be their age, are entitled to maintenance. Hindu law recognizes that a Hindu male has a personal obligation to maintain certain near relatives, such as wife, children, and aged parents. Thus husband has a direct responsibility to maintain his wife. In current system of law, the obligation exists even after the dissolution of marriage. Thus, a wife has the right to maintenance when: The wife lives with her husband. Then the wife lives separate from her husband, and The wife lives separate under a decree of the court or when is dissolved. Hindu Adoption and Marriage Act, 1956 codifies a lot of principles governing the maintenance of dependents of a Hindu male. Under this act, the obligation and responsibilities can be divided into two categories - personal obligation and obligation tied to the property.

CONCLUSION

It is apparent from the ongoing Judicial decisions that the Indian courts have been dynamically liberal in choosing cases relating to support.

The bone of conflict any- way is whether a mistress can get qualified for get up- keep just from the factum of living with a wedded man, combined with the contest concerning whether the bigamy is lawfully allowable. While it shows up from the choices went under the individual laws that the equivalent might be conceivable, legal choices relating to Section 125 keep on maintaining the view that upkeep can be asserted uniquely by a legitimately married spouse.

It can be concluded that the need for protection for the rights of women and children and elderly people must undergo a revolutionary transition if we desire to live in a safe and secure world and seeking it should become one of our chief pursuits. Chapter 9 of the Code of Criminal Procedure is essential for the protection of the rights of the divorced wife and children and aged parents. It is made to protect them from unusual livelihood.

Maintenance is the duty of everyone who has sufficient means for the same, and our statutes, as well as procedural laws, provides enough and clear cut measures that could be opted by the aggrieved to get maintenance.

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