

Maintenance; Exploring the Need for a Gender-Neutral Law

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Abstract: Maintenance laws in India, fundamentally administered by Section 125 of the Criminal Procedure Code (CrPC), are of central significance. These laws effectively offer financial help to individuals who can not sustain themselves, worries about gender neutrality and the changing landscape of relationships, like live - in partnerships, have produced complex legal conversations. Section 125, a foundation of maintenance law in India, generally stretches out financial help mainly to legally married or customarily wedded wives. The utilization of this legislative framework has been scrutinized because of its evident gender specificity and its restricted extension in recognizing live - in relationships. A basic issue emerges while determining whether a female accomplice in a live - in relationship can guarantee maintenance under Section 125 of the CrPC, bringing this make difference to the very front of legal talk. The 2013 judgment in the case of *Indra Sarma vs. VKV Sarma* demanded a thorough examination of live - in relationships and their legal status. In addition, the constitutionality of Section 125, CrPC, has been challenged, especially concerning gender equality and secularism principles enshrined in the Indian Constitution. Courts have been called upon to address these challenges, emphasizing the need for an extensive assessment of the law's inclusivity. This paper looks into these intricate legal issues, investigates critical court rulings, and legislative arrangements, and examines the requirement for a gender - neutral framework within India's maintenance laws. It means to improve understanding of the interplay between law, society, and gender in the Indian setting.

Keywords: Maintenance Law, Gender Neutrality, Section 125 CrPC, Live-in Relationships, Legal Reform

1. Introduction

In the different legal scene of India, addressing issues connected with maintenance and backing for individuals in need is a subject of vital significance. The framework for maintenance under Indian law, essentially represented by *Section 125 of the Criminal Procedure Code* (CrPC) from 1973, has been instrumental in providing financial help to individuals who can not sustain themselves. In any case, the subject of gender neutrality and the intricacies arising from evolving cultural designs, like live - in relationships, have led to intriguing legal discussions. *Section 125 of the CrPC* is a foundation of maintenance law in India, offering financial help basically to wives, whether wedded legally or through customary practices. The legislative framework's application has confronted challenges and scrutiny, essentially because of its apparent gender - specificity and its restricted extension concerning the acknowledgment of live - in relationships.

The issue of whether a female accomplice in a live - in relationship can guarantee maintenance under *Section 125 of the CrPC* turns into a point of convergence of conversation. This matter gained prominence through the 2013 judgment of *Indra Sarma vs. VKV Sarma*, which required a complete examination of live - in relationships and their status under Indian law. There are ongoing discussions about the constitutionality of *Section 125*, CrPC, and whether it lines up with the principles of gender equality enshrined in the Indian Constitution. Courts have been called upon to settle on these challenges, highlighting the requirement for a complete assessment of the law's mainstream nature. This paper dives into these intricate legal issues, examines significant judgments and legislative arrangements, and investigates the requirement for a gender - neutral legal framework in India's maintenance laws. It tries to encourage a more profound understanding of the intersection of law, society, and gender in the Indian setting.

Live in Relationship

In India, the idea of live - in relationships has gained prominence as of late, challenging conventional thoughts of marriage and family. A live - in relationship alludes to a plan where a couple, often unmarried, cohabitates and shares their lives without the legal sacredness of marriage. This type of friendship has brought up different legal and social issues, especially with regards to maintenance under *Section 125 of the Criminal Procedure Code* (CrPC).

The focal thing is whether a female live - in accomplice who has been in such a relationship for a high period can guarantee maintenance under Section 125 of the CrPC. This section generally accommodates maintenance just to wives., judicial interpretations have endeavored to resolve this inquiry.

In the 2013 case of *Indra Sarma vs. VKV Sarma*, the High Court of India outlined the components important to consider a live - in relationship as a "relationship in the nature of marriage". These components include consent to be connected, living together as a couple, and holding out to the public that they are hitched. This legal acknowledgment of live - in relationships as identical to marriage has huge ramifications.

The case of *Chanmuniya vs. Virendra Kumar Singh Kushwaha* fills in as an illustrative illustration of the challenges that can emerge. In this case, the appealing party, Chanmuniya, guaranteed that she was hitched to the principal respondent, Virendra Kumar Singh Kushwaha, according to customs and uses predominantly in the Kushwaha people group. According to the alleged custom, widows were offered to the more youthful brothers of their departed spouses. The marriage was led in understanding with the nearby customs of Katha and Sindur. While they lived together and satisfied marital commitments, Chanmuniya alleged that Virendra Kumar Singh Kushwaha began mistreating her, quit providing maintenance, and would not satisfy his marital obligations. Thus, she initiated

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proceedings under *Section 125 of the CrPC* for maintenance and recorded a suit for compensation of conjugal rights under *Section 9 of the Hindu Marriage Act*. The preliminary court conceded the suit for compensation of conjugal rights, suggesting that Chanmuniya had remarried the main respondent, who consequently abandoned her. The High Court switched this choice, indicating that the fundamentals of a legitimate Hindu marriage, as expected under *Section 7 of the Hindu Marriage Act*, had not been satisfied¹.

This case features the uncertainty and intricacy surrounding live - in relationships, particularly while seeking maintenance. The focal issue is whether an assumption of marriage emerges when parties have lived together for a long period. The vital inquiry pertains to the definition of a "wife" under *Section 125 of the CrPC*, considering the clarification under clause (b) of the Section. The case of Chanmuniya vs. Virendra Kumar Singh Kushwaha further underlined the need to protect the rights of women in live - in relationships. The court held that women in such relationships are qualified for maintenance assuming they meet the standards outlined in the Indra Sarma case.

These legal developments are not without debate, and challenges to the constitutionality of *Section 125 of the CrPC* have emerged. Some contend that the section, which customarily allows maintenance just to wives, may be in conflict with the principles of gender equality and secularism enshrined in the Indian Constitution.

The topic of maintenance in live - in relationships is a complex and evolving legal issue in India. While there has been a few acknowledgment and protection of the rights of female partners in these relationships, the discussion about whether *Section 125 of the CrPC* is really gender - neutral and mainstream enough continues to be a subject of legal and social talk. Courts assume a crucial part in interpreting and upholding the rights of individuals in such relationships, reflecting the changing elements of Indian society².

The challenge to section 125: Is the CrPC at loggerheads with the Constitution?

Section 125 of the Criminal Procedure Code (CrPC) in India gives a legal framework to maintenance to wives, youngsters, and guardians who can't uphold themselves. While the arrangement means to address the financial requirements of dependent individuals, it has started discussing its gender - specific language and its similarity with the Indian Constitution, especially with regard to live - in relationships. The evolving elements of relationships, including live - in courses of action, have brought up basic issues about the materialness of *Section 125 of the CrPC*.

These questions have prompted a challenge to the constitutional legitimacy of the section.

The essential issue spins around whether *Section 125* is at loggerheads with the principles enshrined in the Indian Constitution, which ensures equality and non - discrimination. The arrangement gives off an impression of being gender - specific, as it explicitly makes reference to "wife" and does not clearly include female partners in live - in relationships. This raises worries about gender neutrality and equality under the watchful eye of the law³.

A few judicial proclamations have wrestled with this issue. In the 2013 case of *Indra Sarma vs. VKVSarma*, the High Court needed to determine whether a live - in relationship could be thought of as a "relationship in the nature of marriage" under the Protection of Women from *Domestic Violence Act, 2005*. The court spread out fundamental components of custom - based marriage, including consent to be hitched, dwelling together, and holding out to people in general as a wedded couple. This case featured the requirement for lucidity in the situation with live - in relationships and their qualification for maintenance under Section 125 of the CrPC.

One of the basic cases challenging the constitutionality of *Section 125* is *Chanmuniya vs. Virendra Kumar Singh Kushwaha*. In this case, the High Court extended the extent of the arrangement to include women in live - in relationships, regardless of whether "wife" was not clearly utilized in the section. This choice, while moderate, actually left space for vagueness and interpretation⁴.

Courts have varied in their perspectives on whether *Section 125* disregards the Indian Constitution. Some contend that the arrangement's gender - specific language discriminates against male partners in live - in relationships. Others fight that it is important to protect the financial rights of dependent women, particularly in a society where women are impoverished.

The challenge to the constitutionality of *Section 125* brings up significant questions regarding the requirement for gender - neutral laws. It is fundamental to assess whether a law that "wife" is compatible with the principles of equality and non - discrimination glorified in the Indian Constitution. The contention against the constitutionality of *Section 125* often features the more extensive objective of ensuring gender equality and non - discrimination in legal arrangements.

The challenge to *Section 125 of the CrPC* in India spins around its gender - specific language and its similarity with the Constitution, especially with regard to live - in

¹Garg R, 'Section 125 CRPC' (*iPleaders*, 3 November 2022): <https://blog.iplayers.in/analysis-scope-revision-section-125-crpc/#:~:text=Section%20125%20of%20the%20Criminal,providin g%20monthly%20maintenance%20to%20her.> [accessed 14 October 2023]

²Brillopedia, 'Legality of Live in Relationships with Respect to Section 125 of CRPC' (*brillopedia*, 18 March 2023) <<https://www.brillopedia.net/post/legality-of-live-in-relationships-with-respect-to-section-125-of-crpc>> [accessed 14 October 2023]

³'Need of Gender Neutral Laws in India' (*The Amikus Qriae*, 27 June 2023): <https://theamikusrqiae.com/need-of-gender-neutral-laws-in-india/#:~:text=Equal%20protection%3A%20All%20people%2C%20 regardless,of%20crimes%20based%20on%20gender.> [accessed 14 October 2023]

⁴(*Chanmuniya vs Virendra Kumar singh kushwaha & ... on 7 October, 2010*): <https://indiankanoon.org/doc/1949767/> [accessed 14 October 2023]

relationships. Courts have given uneven interpretations and judgments, leaving space for further legal developments. The discussion at last highlights the requirement for ongoing conversations on the significance of gender - neutral laws and the constitutional principles that guide legal arrangements in India.

IS Section 125 of the CrPC SECULAR ENOUGH?

Section 125 of the Criminal Procedure Code (CrPC) gives a legal framework to maintenance in India. Nonetheless, while examining its mainstream nature and how it intersects with Hindu Personal Law, certain intricacies and questions emerge. In this fragment of our investigation into the requirement for a more gender - neutral maintenance law, we dig into the issue of secularism in Section 125, especially concerning the *Hindu Personal Law*. Section 125 of the CrPC principally takes into account maintenance to be granted to the wife, be it under conventional marriage or customary practices. This arrangement lines up with the principles enshrined in *Hindu Personal Law*, where the husband customarily holds the obligation of providing for his wife. In any case, the intersection of Hindu Personal Law and the more extensive legal framework causes what is going on where some could scrutinize the mainstream nature of Section 125⁵.

The *Hindu Adoptions and Maintenance Act, 1956 (HAM Act)*, which oversees maintenance among Hindus, perceives certain circumstances where a Hindu wife can live independently from her husband while claiming maintenance. This arrangement is especially significant as it recognizes that women might have to live independently because of multiple factors, regardless of whether they look for separation or major marital help. In such a manner, the HAM Act seems to maintain a more mainstream standpoint by providing help to a lady who wishes to live independently while upholding her right to maintenance⁶.

The subject of secularism in *Section 125 of the CrPC* and the corresponding arrangements in the HAM Act emerges from the fact that these laws mainly pertain to the Hindu people group. While it is important to regard and maintain the assorted Personal laws that take special care of various strict networks in India, it is similarly vital to guarantee that these laws line up with the more extensive principles of secularism, equality, and gender neutrality that the Indian Constitution embraces. The strain between private laws and the overarching legal framework raises worries about consistency and gender neutrality. Some contend that the materialness of Section 125 just to the wife, particularly within the setting of *Hindu Personal Law*, could appear to make a division in view of gender. It is critical to perceive that the law accommodates maintenance in view of different grounds, like departure, remorselessness, or other legitimate reasons, and it isn't inherently one - sided against men.

⁵Verma A, 'Need for Gender Neutral Laws in India' (*iPleaders*, 12 July 2020): <https://blog.ipleaders.in/need-gender-neutral-laws/> [accessed 14 October 2023]

⁶(*Maintenance under various laws - district court of India*, 2023): <https://districts.ecourts.gov.in/sites/default/files/1-Maintenance%20-%20by%20Smt%20YJ%20Padmasree.pdf>. [accessed 14 October 2023]

2. Conclusion

The requirement for a gender - neutral way to deal with maintenance laws in India is a pressing concern. The examination of *Section 125 of the Criminal Procedure Code* and its arrangement with the principles of secularism and gender equality has uncovered complex issues. While the law might seem to lean toward wives in its original intent, the Indian legal executive's part in interpretation and application is basic. Courts should guarantee that the law's essential objective, which is to offer help to individuals out of luck, remains intact without creating a division in view of gender. It is fundamental to perceive that *Section 125* does not completely avoid maintenance claims from individuals of any gender. The law is adaptable and considers exemptions, particularly when individuals can show their genuine requirement for help. The quest for gender - neutral maintenance laws in India is an ongoing excursion, reflecting the evolving cultural elements and the steady need to adjust legal frameworks to the upsides of equality and non - discrimination enshrined in the Indian Constitution.

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