

Secularity of the Sec 125 CRPC

Harshit Pandey¹, Dr. Vijay Srivastava²

Abstract: *The basic aim of this article is to look into the secularity of the Sec 125 of CRPC. The prime question which this article looks upon is whether this section is secular enough to look upon all the sections of the society equally excluding the factors such as caste, creed, religion and gender. It also looks upon the basic factors or reasons for the inclusion of this section in CRPC and the uniformity of this section upon all the classes. Maintenance may be granted to dependent children, parents and legally wedded wives, including but not limited to a divorced spouse, mistress, illegitimate children, etc. In certain cases under personal law, the Indian courts have adopted a lenient view and granted the husband the right to receive maintenance. Such right however, is conditional and typically conferred upon the husband, only if he is incapacitated due to some accident or disease and rendered incapable of earning a livelihood. Such an entitlement is not available to an able person, doing nothing for a living or a 'wastrel'. The remedy under Section 125 is speedy and inexpensive, as compared to personal laws. The provision relating to maintenance under any personal law is however, distinct and separate from Section 125. There is no conflict between both the legal provisions. A person is entitled to maintenance under Section 125 despite having obtained an order under the applicable personal law.*

Keywords: Secularity, Uniformity, Maintenance

1. Introduction

The concept of 'maintenance' in India is covered both under Section 125 of the Code of Criminal Procedure, 1973 (Section 125) and the personal laws. This concept further stems from Article 15(3) reinforced by Article 39 of the Constitution of India, 1950 (the 'Constitution'). Under Indian law, the term 'maintenance' includes an entitlement to food, clothing and shelter, being typically available to the wife, children and parents.

The object of maintenance is to prevent immorality and destitution and ameliorate the economic condition of women and children. Maintenance can be claimed under the respective personal laws of people following different faiths and proceedings under such personal laws are civil in nature. Proceedings initiated under Section 125 however, are criminal proceedings and, unlike the personal laws, are of a summary nature and apply to everyone regardless of caste, creed or religion. The object of such proceedings however, is not to punish a person for his past neglect. The said provision has been enacted to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and have a moral claim to support. Maintenance can be claimed either at the interim stage, ie, during the pendency of proceedings, or the final stage [1].

Section 125 of the Code of Criminal Procedure serves as an essential economic umbrella to the weaker sections of the society who the lack of means to support their survival and to maintain themselves. The main objective of this section is to alleviate the status and economic condition of the neglected wives and the divorcees who are discarded. This section serves as a guardian to the Wives, Children and Parents who benefit the maximum from this section. To enforce the social duty of preventing the vagrancy and destitution, that in most severe cases often lead to crimes. Section 125 ensures that maintenance is granted irrespective of the Personal laws of the Hindus (Section 24 of the Hindu Marriage Act, 1955), Muslim (Women (Protection Of- Rights On Divorce) Act, 1986) and Parsis (The Parsi Marriage and Divorce Act, 1936). Though there are separate personal laws governing marriage in every marriage, but Section 125 works on the secular realm.

There is no conflict between the two provisions as the provisions relating to maintenance are distinct and separate [2].

2. Definition of the Term Maintenance

Maintenance is the process of maintaining or preserving someone. A state of providing financial support for a person's living expenses or a support so much in need of. The term has been generally interpreted to include food, clothing and shelter. However, in recent time it has been held that any other requirements, i.e., necessary for a person to remain fit healthy and alive is also to be included within periphery of the term 'maintenance'. It is based on the premise that the wife is entitled to live as per the standard and status of her husband. Under Indian law, the term 'maintenance' includes an entitlement to food, clothing and shelter, being typically available to the wife, children and parents. It is a measure of social justice and an outcome of the natural duty of a man to maintain his wife, children and parents, when they are unable to maintain themselves.

Origin and development of provisions of maintenance

Origin and development of provisions of maintenance:

- Concept of maintenance: The law of maintenance is varied and extensive. In India, different communities have different religions of their own and their maintenance laws are also different with certain common features. Generally, maintenance means maintenance of wife, children, parents, grandparents, grandchildren and in some cases maintenance of poor relations (Muslims).
- In Mulla's book, Mahomedan Law, in Chapter XIX, Maintenance has been defined to include "food, raiment and lodging". This definition of "maintenance" is not exhaustive. The word "maintenance" includes other necessary expenses for mental and physical well-being of a minor, according to his status in society. Educational expenses were included in the definition.
- Chapter IX of the Code of Criminal Procedure, 1973 provides for maintenance of wives, children and parents. The provision of maintenance is a factor for

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social justice, and specially formed to protect women, children, old and infirm parents and comes under the constitutional area of Article 15 (3) read with Article 39 of the Constitution of India.

- d) Generally speaking, Hindu Marriage Act, 1955 does not extend to a person who is a Buddhist, Jain or Sikh by religion. In a similar way, according to the provisions of "The Hindu Adoptions and Maintenance Act, 1956", the said act of 1956 applies to any person who is a Buddhist, Jain or Sikh by religion and so on (Ref. Sec 2(b)). This Act of 1956, however does not extend to any person who is a Muslim, Christian, Parsi or Jew by religion (Ref- Section 2(c) of 1956 Act). In case of material considerations, it would be revealed that provisions of maintenance in chapter IX of the Code of Criminal Procedure, 1973 is basically secular in nature and provisions of the said chapter is applicable to all sections of communities in India, whatever may be their caste or religion i.e., personal laws. It must however be very emphatically stated that personal laws is relevant for coming at a decision regarding the validity of the marriage, etc and such consideration can not be totally excluded from due consideration at the relevant time.

It can be said that such maintenance laws in Cr. P.C., 1973 have their roots in the vagrancy laws in England. The provisions of maintenance laws of Hindu Personal law and Muslim Personal law have their original roots in the Hindu Dharmashastras and in the holy Koran. The Christian personal laws have root in doctrines of the holy Bible.

Order for Maintenance under sec 125 of CRPC:

Order for maintenance of wives, children and parents;

- a) If any person having sufficient means neglects or refuses to maintain
- b) His wife, unable to maintain herself, or
- c) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- d) 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, or
- e) His father or mother, unable to maintain himself or herself,

It is a natural and fundamental duty of every person to maintain his wife, children and old age parents if they are unable to maintain themselves or they have no means or position to maintain themselves. The provisions of the Code invoke a man to realise his natural duty and responsibility as a father and it serve as a special purpose to avoid vagrancy. The sole purpose and object of these provisions is to enable the discarded wife, helpless and deserted children's and destitute parents to secure the much needed relief because without these provisions of law the perpetrator will escape the responsibility causing a burden to his wife and children and indirectly the compels them to become vulnerable to various crimes. At the time of enactment of this code section 125 is intended to be

applicable to all irrespective of their personal Laws although maintenance is a Civil remedy yet it has been made a part of this Code to have a quick remedy and proceedings and S.125 is not a trail as non-payment of maintenance is not a criminal offence. Right to seek maintenance Under Section 125 of the Cr.PC is an independent right. It should be kept in view that the provision relating to maintenance under any personal law is distinct and separate. There is no conflict between the two provisions. [3]

3. Person Entitled to Receive Maintenance

Maintenance under section 125 of the code of criminal procedure 1973 applies to any relationship where one person has a legal duty to maintain another person.

- a) Husbands and wives are responsible for each other's maintenance.
- b) The parents of a child share responsibility for the maintenance of that child.
- c) Children have a duty under certain circumstances to maintain their parents.

Maintenance may be granted to dependent children, parents and legally wedded wives, including but not limited to a divorced spouse, mistress, illegitimate children, etc

Wife: Wife can claim maintenance only if she is a legal wedded wife and not just a mistress. But, if she is living in adultery or being married to any other man she cannot claim maintenance. Marriage must be a valid one as per the personal law of both the parties, but when the marriage is proved illegal the wife cannot claim for maintenance. Wife means and connotes divorced wife or divorced by mutual consent, but the divorced wife can claim maintenance as long as she does not remarry.

For Hindus, a legally valid marriage requires that:

- Both parties are Hindus,
- The marriage is performed in accordance with customary rites of the parties,
- Neither party has a living spouse at the time of marriage,
- Neither party is of unsound mind at the time of marriage,
- The male is at least 21 years old,
- The female is at least 18 years old and
- Both parties are not related by sapinda or within prohibited degrees of relationships.

For Hindus, the second wife cannot claim maintenance because a second marriage is forbidden by law and is not recognised as being valid. The second wife is entitled to claim maintenance only if the husband concealed his first marriage from her.

For Muslims, a legally valid marriage requires that:

- Both parties are Muslims of sound mind

- Both parties have attained puberty (presumed at the age of 15),
- Both parties consent to the marriage,
- The parties are not temporarily or permanently prohibited from marrying each other,
- The woman is not married to another man or observing iddat for another man,
- A proposal (ijab) is made,
- An acceptance of the proposal (qubul) is made,
- Both proposal and acceptance are made at the same occasion and signify the establishment of marriage with the immediate effect,
- The proposal and acceptance are not repugnant to the Shariat,
- The proposal and acceptance are witnessed by two men or a man and two women who are Muslim adults of sound mind, know the bride and groom with certainty and understand the proposal and acceptance.

Live-in relationships are presumed to be a marriage. The wife who lives separately without sufficient reasons or due to personal mutual agreement cannot claim maintenance. "Wife" includes a divorced woman, but she must not be remarried on the date that she files an application for maintenance. A divorced Muslim wife can claim maintenance even if the iddat period has passed, but she must not be remarried. The age of the wife is irrelevant in claims of maintenance – she may be a minor or a major. Additionally, the wife must not be living in adultery.

Child: Child means a person who has not reached 18 years and who is incompetent to enter into any contract. A child need not be a minor, but it must be by reason of physical or mental abnormality or injury unable to maintain itself." Unable to Maintain itself" means unable to earn one's livelihood. The Basic Duty of Parents to maintain their children a) Both parents of a child have a legal duty to maintain their children. This means reasonable support to give children a proper living and upbringing. It includes money for food, accommodation, clothing, medical care and education. b) It is the primary responsibility of parents to maintain their child. Even if the child is cared for by someone else, the mother and father both have a duty to maintain the child. If a child is adopted, the adoptive parents have a duty to maintain the child. c) The duty to maintain a child is supposed to be shared between the two parents in proportion to their respective means. This means that the duty must be shared on the basis of how much money each of them earns and what they possess. The cost of raising a child will not necessarily be divided half and half between mother and father because the wages and resources. Of each parent must be taken into account. However, one parent will have to carry 100 % of the cost of maintenance if the other parent has no income or property. If one parent has some income and the other parent earns more, then the child expenses might be divided accordingly, Such as 20 % of the parent with small income and 80 % for the other parent.

His Fathers Or Mothers: Both the mother and the father, whether natural or adoptive, can claim maintenance from

any one or more of their children. Daughters are also liable to pay maintenance to the mother and the father. A step-mother can claim maintenance only if she is a widow and does not have natural-born sons or daughters.

Conditions for Granting Maintenance

Person from whom maintenance is claimed must have the ability to pay maintenance. Ability means being employed, owning land, having a source of income or having a healthy body capable of work.

- 1) The person must have neglected the claimant or refused to pay maintenance.
- 2) Persons claiming maintenance must be unable to maintain themselves. If a person is healthy, adequately educated or capable of pursuing gainful employment no maintenance is given. Wives and elderly parents are generally given maintenance. The mere fact that the wife is earning does not disentitle her from claiming maintenance. The question is whether she is able to maintain the same standard of living that subsisted prior to the neglect or divorce with her own earnings without having to depend on another. [4]

Cancellation of Order of Maintenance

Section 125 also lays down certain provisions in which the spouse is not eligible to the maintenance amount. The provisions are as follows:

- a) If the wife is living in adultery
- b) If the wife refuses to live with her husband without sufficient means
- c) If by mutual consent they have decided to live separately
- d) If the competent Civil court announces a decision
- e) If the wife remarries to another man after the divorce, then the maintenance amount is cancelled with effect from the date of marriage.

Failure to Comply with the Order

Section 125 (3) specifies the action that can be taken by the Magistrate on failure on compliance with the order which is as follows:

- a) For every breach of the contract a warrant is issued for levying the amount
- b) The imprisonment of one month is a last resort when recourse to attachment and sale fail.

4. Judicial Precedents

Shamima Farooqui v Shahid Khan (CRIMINAL APPEAL NOS.564-565 OF 2015)

This is a case from Lucknow where a lady named Shamima Farooqui was ill treated by her husband named Shahid Khan, who later got remarried. She filed an application in the year 1998 but was taken up in the year 2012. Her husband Khan was a Nayak in the Army who earned Rs 17,654 per month, including some perks. Rs

2000 was granted to her initially by family court which later was increased to Rs 4000 after discovering that she had no means other than this to support her life. However the High Court reduced it to Rs. 2000 per month, taking note of the fact that the husband had retired from his job of Nayak in the Army in the year 2012. This drew the Apex Court's ire which declared that Rs 2000 were not sufficient do it was again increased to Rs. 4000. In this case, the bench consisting of Justice Dipak Misra and PC Pant pronounced that husband who has sufficient means and earns stable income that is enough to support himself is under the legal obligation to pay the maintenance amount to his wife. [5]

Mohd. Ahmed Khan v. Shah Bano Begum

Ms. Shah Bano Begum was married to a lawyer named Mr. Mohd. Ahmed Khan. They lived together for 43 years and had five children. In 1978, Mr. Khan threw Ms. Begum out of the shared household and Ms. Begum applied for maintenance from Mr. Khan under Section 125 of the Criminal Procedure Code, 1973 (Cr.P.C, 1973). Pending her application, Mr. Khan dissolved the marriage by pronouncing a triple talaq (divorce on the triple utterance of the word "talaq" by a Muslim husband) and paid Ms. Begum 3000 rupees as mahr (money/valuable property promised to a Muslim woman for her financial security under the marriage contract) and a further sum of maintenance for the iddat period (a period of 3 months that a Muslim woman has to observe before she can remarry after her divorce). Mr. Khan argued that Ms. Begum's claim for maintenance should be dismissed as Ms. Begum had received the amount due to her on divorce under the Muslim personal law. The lower court granted Ms. Begum's claim for maintenance, which was set at 179 rupees per month by the High Court in a revision application. Mr. Khan appealed to the Supreme Court in 1985 and the Court held that a payment made pursuant to personal laws cannot absolve a husband of his obligation to pay fair and reasonable maintenance under Section 125 Cr.P.C, 1973 and a husband can be liable to pay maintenance beyond the iddat period.[6]

5. Conclusion

The section 125 CRPC is a measure of social justice and specially enacted to protect women and children irrespective of their caste, creed, gender and religion. By virtue of judicial pronouncements and other steps, rights of women has been restored but it will become fruitful only when under lying thinking are changed, the women should emancipate themselves educationally, economically and socially for their well being only and then they can understand their rights and worth and thereafter the social upliftment of the whole community is possible. It is evident from the recent judicial decisions that the Indian courts have been progressively liberal in deciding cases pertaining to maintenance. This Section provides a summary remedy and is applicable to all persons. It has no relationship to the personal law of the parties. It provides speedy remedy and a summary mode for enforcing the order.

The society changes continuously so shall the law, in order to match the need of the society. The women, children, and parents being the most essential part of the family as well as the society shall be taken care of and it is a responsibility on the part of the state to make such law to protect their interests. Section 125 is broad enough and secular in nature in order to include all the religions followed in India by different people across the country. But we need to ensure that there is no misuse of the same.

References

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