
EXPLAINING THE CONCEPT OF MAINTENANCE ACCORDING TO SECTION 125 OF CRPC

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INTRODUCTION

Maintenance means financial support to his dependent wife, his legitimate and illegitimate minor child, whether married or unmarried, unable to maintain himself, or his parent. In India, maintenance is governed by the “Code of Criminal Procedure, 1973 (CrPC) under section 125 of the CrPC provides maintenance”. The provision of “maintenance under Section 125 CrPC” is a crucial aspect of family law and aims to ensure social and economic justice for vulnerable individuals. The provision is designed to provide a speedy remedy to women and children who cannot maintain themselves. However, the question arises as to whether the provision serves equality or not.

The historical context of women's economic and social status in India is an essential aspect of understanding the importance of the provision of “maintenance under Section 125 CrPC”. In India, women have traditionally been viewed as subordinate to men, and social status has been significantly lower than men. Women have no access to education, employment opportunities, and economic resources and have been confined to the domestic sphere. The provision of “maintenance under section 125 of CrPC”¹ It is to reduce the women's economic dependency on their husbands or fathers. This provision mandates that husbands provide economic support to their wives, and father support to their daughter and child. The provision has given women the legal right to seek financial support from their husbands in case of neglect or desertion, thereby empowering them to assert their rights and seek redressal.

RESEARCH OBJECTIVE

In this project, we will discuss many objectives regarding the Maintenance under section 125 of CrPC in which our main four objectives are: -

- An analysis of maintenance under section 125 of CrPC

¹ Criminal Procedure Code, § 125, 1973

- An analysis of maintenance according to Hindu law with the provision of section 125 of CrPC 1973
- An analysis of maintenance according to Muslim law with provision of section 125 of CrPC 1973

ANALYSIS

MAINTENANCE UNDER SECTION 125 CRPC

Section 125 Of CrPC is talking about the ‘order for maintenance of wives, children, and parents, when his wife is unable to maintain herself or his legitimate or illegitimate child minor child, whether married or not, unable to maintain, his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, because of any physical or mental abnormality or injury unable to maintain itself, or his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate.’ **Section 125** allows the wives to seek financial aid from their husbands during the case proceedings and at the time of the divorce proceedings. In “*Anita v Amit*”, in this case, it was laid down that just because the wife is an earning member, but if she cannot maintain herself, then the husband must give her financial support to his wife; this is not sufficient reason to deny the maintenance claim. The thing which said that the unable to maintain herself’ within Section 125². This does not impose rule that the wife should be entirely destitute to be covered within the ambit of Section 125³. In “*Chaturbuj vs Sita Bai*”⁴, in this case, it was held that if the wife is earning enough to maintain herself and her household, whether the house belongs to her own or the couple’s home, the main first thing in this case, which came over the years, was regarding that whether the section 125⁵ will apply to a Muslim woman asking for maintenance after her ‘**Iddat**’ period is over.’

Section 125 of CrPC has been subjected to interpretation by a court, and many landmark judgments have been decided that have helped to shape the provision’s scope and impact and the important and some significant cases discussed below:

1. “*Savitaben Somabhai Bhatiya v. State of Gujarat*” (2005)²

² Criminal Procedure Code, § 125, 1973=

³ Criminal Procedure Code, § 125, 1973

⁴ *Chaturbuj vs Sita Bai* AIR 2998 SC 530

⁵ MANU/DE/0582/2020

In this judgment, the Apex Court laid out that the obligation to provide financial aid to a wife under Section 125 CrPC was not limited to the husband's earning capacity at the time of the marriage but was a continuing obligation. The court also held that the wife's inability to maintain herself must be established, and the maintenance awarded should be reasonable.

2. “Sunita Kachwaha v. Anil Kachwaha (2014)”⁶

This case dealt with a wife living independently from her husband because of his fault and is entitled to “maintenance under 125 of CrPC”; the court held that even if the wife was living separately with her husband because of her fault, she was entitled to maintenance if she was unable to maintain herself.

3. Chaturbhuj v. Sita Bai (2008)⁷

In this judgment, the Apex Court laid down the obligation to provide “maintenance under section 125 of the CrPC”, which was not limited to the husband. Still, the wife is also made eligible to give maintenance to the husband in applicable cases if the husband cannot maintain himself. The court held that if the Husband could not maintain himself, the wife was also obligated to provide financial assistance to the husband.

4. Rajnesh v. Neha (2021)⁸

In this judgment, the Apex Court stated that the live-in partner is also entitled to claim financial aid under “Section 125 CrPC”. The Supreme Court held that a live-in partner could not maintain herself; she could claim maintenance from her partner.

MAINTENANCE RIGHT OF MUSLIM WOMEN UNDER SECTION 125 CrPC 1973

The main problem of the right to maintenance sprouted from the case of Shah Bano v. Mohd Ahmed Khan. In this case, the marriage in 1932 yielded two daughters and three sons for Mohd Ahmed Khan and Shan Bano Begum. Sixty-two-year-old Shah Bano was divorced by her husband in 1975 and sent, along with their children, out of their marital home. She filed a Section 125 maintenance suit in April 1978 because her husband refused to give her the Rs. 200 rupees as financial assistance that he had promised. Shah Bano's spouse filed for divorce from her in November 1978 by saying "Talaq" thrice. For Muslims, such Talaq is irreversible.

⁶ SLP (Crl.) No. 2659/2012

⁷ Chaturbhuj v. Sita Bai (2014) 16 SCC 715

⁸ Criminal Appeal No. 730 of 2020

‘The husband took the defense in the trial court that since Shah Bano was no longer his legally wedded wife, she was not entitled to maintenance from him. He had already furnished the Mehr amount and provided maintenance for her during her *‘Iddat.’* The trial court rejected the husband's contention and ordered him to pay her a monthly amount of Rs 25 as maintenance. Shah Bano filed an appeal in the Madhya Pradesh High Court for increasing the amount of maintenance from Rs 25 to Rs 179. The Madhya Pradesh High Court accepted her appeal’. In this case, many issues arose, like whether the Muslim is covered under Whether the personal law is superseded by “section 125 of the Criminal Procedure Code” or Whether the maintenance that a Muslim husband is liable to pay to his divorced wife falls within the ambit of Muslim personal law or not. The judgment was pronounced by “C.J., Y.V. Chandrachud, and Mohd's appeal. Ahmed Khan was dismissed because he failed to provide maintenance to his wife. The Apex court said that the provision in section 125 of the CrPC code applies to all”, irrespective of religion, and thus, Muslims cannot remain ignorant of such a provision. The court stated that in case of a conflict, the provision in “section 125 of the CrPC” code will gain predominance over the personal law. It stands to denote that there is nothing in conflict between those covered under “Section 125 and the Muslim Personal Law” concerning the liability of the Muslim husband to maintain a divorced wife if she is unable to support herself.

Apex Court, in this case, held that the ‘Muslim husband is obliged to pay his wife till *‘Iddat’* period indeed though this circumstance does not contemplate the rule of law that’s said in Section 125 of CrPc., 1973 and subsequently the obligation of the husband to pay maintenance to the wife extends beyond the *‘Iddat’* period if the wife does not have sufficient means to maintain herself. Further, the court said that this rule, according to Muslim law, was against humanity or was wrong because, in this law, here, a divorced wife was not in a condition to maintain herself. The husband's payment of Mehar on divorce is insufficient to exempt him from the duty to pay maintenance to the wife’. The important case that was cited in this case was *Fuzlunbi Versus K. Khader Vali and another*⁹, *“Bai Tahira V Ali Hussain Fissali Chothia & ANR”*¹⁰, *Nanak Chand V. Chandra Kishore Aggarwal & others*¹¹, *Mst Jagir Kaur*

⁹ “*Fuzlunbi Versus K. Khader Vali and another* (1980) 4 S.C.C. 125”

¹⁰ “*Bai Tahira V Ali Hussain Fissali Chothia & ANR* (1979) 2 S.C.C. 316”

¹¹ “*Nanak Chand V. Chandra Kishore Aggarwal & others* A.I.R. 1970 S.C. 446”

*& ANR V. Jaswant Singh*¹², *Hamira Bibi v. Zubaida Bibi*¹³, *SyedSabir Husain v. Farzand Hasan*.¹⁴

Another landmark case related to maintenance under Muslim law was *Shahada Khatoon v. Amjad Ali (1984)*¹⁵, in this case, the main issue was whether a divorced Muslim woman was entitled to “maintenance under Section 125 of CrPC”. The court held that the provision under section 125 of CrPC was not restricted to a particular religion and any personal law and that a Muslim woman who was divorced was entitled to ask for financial aid if she was unable to maintain herself.

MAINTENANCE PROVISION UNDER HINDU LAW

The maintenance provision has been codified under Hindu law. “**The Hindu Marriage Act in 1955 and the Hindu Adoption and Maintenance Act in 1956**” were enacted to give married women a statutory right to maintenance entitlement. There are two types of maintenance given by the court: “permanent maintenance and temporary maintenance,” sometimes referred to as a Pendente Lite. In temporary maintenance, the husband gives short-term financial support to his wife while the case is in court proceedings. In permanent maintenance, the financial aid is given at periodic and continuous intervals after the court proceedings are complete.

“*Sections 24 and 25 of the Hindu Marriage Act, 1955*” deal with the provision of the *Pendente lite and permanent maintenance*”, respectively. In this provision, the court can direct either husband or wife to give financial assistance to his/her spouse. That depends on the facts of the case; if the spouse is asking for maintenance and she is also earning money, then examine whether the wife is asking for money sufficient to maintain herself.

Section 24 declares the law relating to maintenance pendente lite and expenses of proceedings. If during the pendency of divorce proceedings, she proves her insufficiency of funds to live during the proceedings of the divorce case, then she can claim maintenance pendente lite¹⁶.

Under Section 25¹⁷ of the Act about permanent alimony and maintenance, the court decree that the parties should provide maintenance either in one-time or in periodical installments. Hence, the respondent here could be either a husband or a wife. Sections 25(2) and 25(3) permit the

¹² “*Mst Jagir Kaur & ANR V. Jaswant Singh A.I.R. 1963 S.C. 1521*”

¹³ “*Hamira Bibi v. Zubaida Bibi A.I.R. 1916 P.C. 46*”

¹⁴ “*SyedSabir Husain v. Farzand Hasan A.I.R. 1938 P.C. 80*”.

¹⁵ “*Shahada Khatoon v. Amjad Ali (1999) 5 SCC 672*”

¹⁶ “*Section 25 of Hindu Marriage Act, 1955*”

¹⁷ “*Section 25 of Hindu Marriage Act, 1955*”

first “maintenance order under Section 25(1)” to be varied on a change of circumstances. These provisions are special for the husband's right to claim maintenance from his wife, but only if the latter cannot maintain himself. “*Hindu Adoption and Support Act, 1956*”, Section 18, gives the wife a right to claim support from the husband during her lifetime. The wife need not live with her husband to get protection under Section 18¹⁸.

The important thing of law that the various courts faced gives their decision for establishing the quantum of maintenance that how much should be granted; various rules were drawn, also some guidelines and direction about this issue.

In “*Mangat Pal v Punni Devi*”¹⁹, the Court has held that maintenance should enable the wife to continue her normal standard of living, which she usually did. Her husband is liable to pay her only for basic necessities, and basically, what is required of women for the standard living of life. The court also said the husband must pay his wife for her basic necessities. In another case, “*Bhuwan Mohan Singh v. Meena*”²⁰ Regarding their social status and the type of society in which they move in, the husband has to provide his wife with a certain level of financial support.

In the case of “*Jasbir Kaur Sehgal v. Distt. Judge Dehradun*”, the court laid down the provision that if the wife is not an earning member, she was not an earning member. The husband must maintain his wife and the marriage based on the “*Hindu Adoptions and Maintenance Act of 1956*” provisions. For quantum of maintenance, in the case of *Amarjit Kaur v. Harbhajan Singh*, the court held that when a wife or husband seeks maintenance from each other, they must not have a sufficient income to support themselves. The court, in its conclusion, said that the quantum of maintenance depend on the discretion of the court.

MAINTENANCE OF OTHER FAMILY MEMBER AND DEPENDENT UNDER THE HINDU LAW

The “*Hindu Adoption and Maintenance Act 1956*” is not just limited to the wife and husband; it also provides financial aid to the family members. Other than the widow and husband, there is also the widowed daughter-in-law whose services particularly fall to her aging parents, children, and those constituted by the law to protect the dependents under the eligibility criteria mentioned in 10. Section 19 and Section 20 are the ones to issue financial aid. Moreover, a

¹⁸ “Section 18, Hindu Adoption and Maintenance Act, 1956”

¹⁹ “*Mangat Pal v Punni Devi* (1995) 6 SCC 88”

²⁰ “*Bhuwan Mohan Singh v. Meena* AIR 2014 SC 2875”

stepmother can succeed in the suit for maintenance against her stepson as even such a stepmother falls within the eligibility criteria of the term 'parents' specified in the XIIth schedule. **Section 21** defines the term “dependents”, and all those people who are dependent on the deceased and legally should be taken care of from his property are included in this term.

In “*Kalla Mistry v Kalaimmal*”²¹, It was established that an born of unmarried parents child born out of an adulterous relationship could file a case for “maintenance under section 20”. The illegitimate child is born out of an adulterous relationship, so it is the responsibility of the mother and father to provide the basic necessities for living his life. In “*Padmja Sharma v Ratanlal Sharma*”²², the court laid down that if the couple mutually divorced each other and earns enough to maintain himself/herself, then to maintain the child is not the responsibility of the father, but the mother also is equally entitled to maintain the child.

RIGHT TO MAINTENANCE IN MARRIAGES UNDER MUSLIM LAW

Under Muslim law, the wife may be awarded maintenance, that is, an allowance in cash from the husband, though this would be subject to the terms of the marriage and any prenuptial agreements. The husband's duty to maintain the wife is based on her earning capacity, though it is there by virtue of such duty. That duty is, however, subject to her being faithful to her husband and carrying out his reasonable directions. The limitation attached to this privilege is that the wife should not be unreasonable or refuse to live with her husband without a valid cause. Section 125 of the CrPC remains uninfluenced by personal law or custom governing the parties.

MAINTENANCE FOR CHILDREN UNDER MUSLIM LAW

People can only understand through reading the Muslim Personal Law thoroughly to point out the several hidden messages, meaning that only men are entitled to inherit wealth. The key primary liability to child life support lies with their parents but, to a greater extent, with the father. A son is eligible for financial aid from his father until he reaches the age of 18 years, and a daughter is eligible for it till she is married or remains unmarried. The father's commitment to caring for his son and daughter is over when they do not live with their father against the parties' wishes. If a child is insane or is physically infirm as well as mentally handicapped than the obligation of the father towards so maintaining the child keeps on until

²¹ *Kalla Mistry v Kalaimmal* (1962)2MLJ529

²² *Padmja Sharma v Ratanlal Sharma* (2000) 4 SCC 266

the child dies. The mother is legally obligated to protect her children when the child is not legitimate or she is unable, as the husband is not interested in sustaining his children. In the case of the Hanafi law, the father and the mother, when the father is poor and in a good condition to care for the children, bear the responsibility of maintenance together. Nevertheless, according to the Shaefi law, which may not apply to only one kind of Maharaja, the mother would not be concerned about her kids' maintenance when the father cannot help her with the expenses even if she is in a better position to do it. In that situation, the responsibility of supporting the children is shifted to the grandfather.

CONCLUSION

Section 125 of the CrPC is a necessary step to promote gender equality and justice, and under Provision, *the important thing is that this applies to all citizens of India*. This is applied to all religions of India. In Muslim law husband is not obliged to pay money after the 'iddat' period, but in the case of Shah Bano, the Supreme Court decided that the husband is liable to pay financial support to his wife, and the Supreme Court held that the 125 of CrPC applies to all the people. This provision has played a crucial role in protecting wives rights, children's rights, and parents' to seek financial assistance. The provision has been discussed by the courts, with the main objective of ensuring that those unable to maintain themselves receive financial support. While there have been criticisms of the provision, it is important to recognize that it is a necessary corrective measure to address the systemic inequality women face in India.

BIBLIOGRAPHY

- Prof. G. C. V. Subba Rao's, Family Law in India, 302-09 (10TH ed. 2011)
- Dr. Paras Diwan, Family Law, 239-257, (12th ed. 2021)
- Tahir Mahmood, Principle of Hindu Law, 196-211 (2014. Ed)
- DR POONAM PRADHAN SAXENA, Family Law II, 202-22 (4th ed. 2019)
- S. Krishnamurthi Aiyar, Law of Marriage Maintenance Separation and Divorce, 528-532, (4th ed. 2012)
- Tahir Mahmood & Saif Mahmood, Introduction to Muslim Law, 178-152 (2nd ed. 2018)
- Indian Journal of Law and Legal Research, Vol. 5 Issue 2, pp. 1-7
- Kant, A. (1996). RIGHT OF MAINTENANCE TO INDIAN WOMEN. Journal of the Indian Law Institute, 38(3), 392–404. <http://www.jstor.org/stable/43952393>
- Engineer, A. A. (1999). Muslim Women and Maintenance. Economic and Political Weekly, 34(24), 1488–1489. <http://www.jstor.org/stable/4408068>