
MAINTENANCE OF WIFE: WHETHER SEC.125 NEEDS TO BE GENDER NEUTRAL?

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Introduction

Section 125 of the Criminal Procedure Code has been much debated in today's changing society. This section deals with the legal requirement that spouses, children and parents provide financial support when they are unable to support themselves. However, there is a growing debate about whether this law should be updated to be gender neutral.

Gender neutral means that the law would apply equally to everyone, regardless of whether they are male or female. Supporters of this change argue that as society evolves, laws should evolve as well. They believe that just like women, men can also find themselves in situations where they need financial support from their wives. This change is seen as an opportunity to ensure justice and equality in the law.

On the other hand, making Section 125 gender neutral requires consideration of various factors. These include not only legal considerations, but also social and cultural beliefs that have existed for a long time. Changing this law would require a careful study of these factors and possibly changing other related laws.

Statement of the problem

The challenge is to find out whether section 125 should be gender neutral regarding spousal maintenance. This question requires an examination of the socio-legal aspect to assess the fairness and adequacy of the existing framework. In the balance between traditional values and evolving social norms, the issue requires to investigate whether the law addresses the financial obligations of both husbands and wives in marital disputes.

Relevance of study

1. To examine whether the current framework aligns with principles of gender neutrality.

2. Examining whether Section 125 should be gender-neutral has implications for deterrence.
3. Analysis of gender neutrality in maintenance laws in understanding the legal consequences that defaulters, often husbands, may face in criminal proceedings.
4. To study the development of legal precedents and case law, shaping how future cases are handled within the criminal justice framework.

Literature review

1. *Voices of Justice: A Book of Readings on Law and Society* - Indira Jaising is a prominent lawyer and human rights activist known for her work on gender justice. Her writings often discuss the intersection of law and society, making her works a valuable resource for understanding the nuances of maintenance laws and gender dynamics in India.
2. *Family Law: A Legal Empowerment Approach* - Flavia Agnes, a women's rights lawyer, has written extensively on family law in India. Her book provides a legal empowerment perspective, likely offering insights into the debates surrounding the need for gender-neutral provisions in family laws, including Section 125.
3. *Talking of Justice: People's Rights in Modern India* - Leila Seth, the first woman Chief Justice of a state High Court in India, offers perspectives on justice and rights in modern India. Her writings provide a broader understanding of legal principles that underpin discussions on gender-neutral maintenance laws.
4. *Women and Law in India: An Omnibus* - Dr. Usha Ramanathan, a legal scholar, has written on various legal aspects, including women's rights. Her works could provide context on the legal landscape concerning women's issues in India.
5. *Family Law in India* by Paras Diwan: This comprehensive book on family law in India may provide insights into the legal provisions related to maintenance, including Section 125.

Objectives of study

1. Examine the legal principles surrounding the maintenance of a wife under Section 125

to assess its alignment with principles of gender equality.

2. Assess the ability of existing laws to respond to the changing dynamics of current relationships and evolving social expectations.
3. Assess the role of Section 125 in promoting or hindering the economic independence of both spouses and its implications for gender equality.
4. Scrutinize the legal and social justice implications of maintaining or altering the gender-specific nature of Section 125, considering issues of fairness and equity.
5. Propose potential policy recommendations or legal reforms based on the findings, aiming to enhance the effectiveness and fairness of spousal maintenance laws.

Hypothesis

Changing Section 125 to be gender-neutral is likely to make it work better in the overall justice system. It will make the judicial system fairer.

Research questions

1. How far does it seem fair when the law about supporting a spouse is only for one gender?
2. In what ways does a gender-neutral approach in Section 125 contribute to the broader goals of gender equality?
3. What are the potential positive and negative implications of making Section 125 gender-neutral in terms of its effectiveness within the justice system?

Research methodology

The sources of this research paper are secondary. Various books, journals, articles have been cited to complete this paper it is a descriptive and doctrinal paper.

The justice of only one gender supporting a spouse is a complex issue, especially in the context of evolving social norms and gender roles. Laws such as Section 125 CrPC have been built around traditional family roles where men are usually the breadwinners. The purpose of this

law was to protect women who were often financially dependent on their husbands. However, as gender roles evolve, this one-sided legal obligation has come under scrutiny. The argument for gender neutral laws has gained support.¹

The main argument is that laws should reflect the current social structure where both men and women can be wage earners and carers. In cases like **Rajesh Sharma and Ors v. State of U.P. and Anand(2017)**², the Supreme Court of India highlighted the abuse of dowry laws, citing the need for gender-balanced laws.

Similarly, in countries such as the United States, spousal support laws are more gender neutral, recognizing that either spouse may be the primary breadwinner or require support. However, the counter argument is based on the notion that despite social progress, women are often still economically disadvantaged. This is reflected in wage gaps, poorer job opportunities and societal expectations of women as primary caregivers.

The law thus acts as a safeguard for women, who are statistically more likely to be financially vulnerable after divorce or separation. In **Chaturbhuj Vs. Sita Bai (2008)**³ Supreme Court of India highlighted alimony to protect women and rights.

While the pursuit of gender neutrality in laws like Section 125 CrPC reflects the changing times, the decision to amend such laws must consider the existing socio-economic realities. It is a delicate balance between responding to progressive ideals and protecting the interests of the disadvantaged in the current social framework.⁴ The goal should be to achieve fairness and justice for all, respecting both the progress made in gender equality and the basic reality of economic inequalities.

Adopting a gender-neutral approach in Sec.125 of the CrPC can significantly advance the broader goals of gender equality in line with current social values and legal principles. Gender neutrality legally recognizes that both men and women can hold positions that require or provide financial support. This shift from traditional gender roles to a more egalitarian position

¹ Kumar, S. (2017). *The Gendered Terrain of Maintenance for Women*. Notion Press. Available at Over Drive

² Rajesh Sharma & Ors v. State of U.P. & Anr (2017), Supreme Court of India.

³ Chaturbhuj v. Sita Bai (2008), Supreme Court of India.

⁴ Maintenance Laws for Wives, Children and Parents in India – A Comprehensive Analysis. Social Laws Today. Available at Social Laws Today

reflects the evolving understanding of gender roles in society.⁵

In practice, a gender-neutral section 125 would recognize that men can also be primary carers or homemakers and need financial support in the event of divorce or separation. This is evident in countries like Canada, where spousal support laws consider the financial situation of both partners, regardless of gender. This approach is in line with the principles of equality and non-discrimination laid down in several international agreements, such as the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**.⁶

Gender-neutral laws can help address the stigma associated with men seeking financial support. It creates a legal framework based on the financial needs and contributions of each spouse rather than gender. This was emphasized in **Miller v. Miller (2006)**⁷ in Great Britain, where the court emphasized the importance of equal treatment of the financial contribution of both spouses. However, it is important to ensure that the pursuit of gender neutrality does not inadvertently disadvantage women, who may still face systemic barriers in working life.⁸

In countries like India, where wage differentials and social norms strongly affect women's economic opportunities, the implementation of gender-neutral laws must be careful and sensitive.⁹ **Bhuvan Mohan Singh Vs. Meena (2014)**¹⁰, the Supreme Court of India emphasizes the importance of balancing gender neutrality with the need to protect potentially vulnerable individuals.

Hence, it can be said that making section 125 gender neutral can be an important step towards achieving gender equality in the legal system. It recognizes the changing dynamics of gender roles and ensures that laws are based on need and justice rather than gender. However, this must be carefully balanced with the recognition of gender differences in society.

Making Section 125 of the CrPC gender neutral will have both positive and negative effects on its use in the judiciary. It is positive that such a change would be a gradual step towards gender

⁵ Jaising, I. *Voices of Justice: A Book of Readings on Law and Society*.

⁶ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

⁷ Miller v. Miller (2006), United Kingdom Supreme Court.

⁸ Seth, L. *Talking of Justice: People's Rights in Modern India*.

⁹ Right to Claim Maintenance of Women in India: An Overview of Judicial Decisions. Law Foyer. Available at Law Foyer

¹⁰ Bhuvan Mohan Singh v. Meena (2014), Supreme Court of India.

equality, reflecting the evolving dynamics of today's society, where gender roles are increasingly changing.¹¹

A gender-neutral law would recognize that both men and women can be in vulnerable situations and thus need legal protection. This is in line with the principle of equality before the law enshrined in Article 14 of the Constitution of India and international conventions such as CEDAW. For example, in the landmark case of **Joseph Shine v. Union of India (2018)**¹², the Indian Supreme Court decriminalized adultery and emphasized the need for gender-neutral laws in response to changing social norms. Similarly, countries such as Germany have implemented gender-neutral alimony laws that recognize the different family structures and economic realities of individuals regardless of gender.

However, possible negative effects must be considered. In societies where economic and social inequalities between the sexes are still prevalent, a gender-neutral law may not usually adequately protect the more vulnerable party.

For example, in India, where wage inequalities and social norms strongly affect women's economic opportunities, implementing the gender-neutral Section 125 could deprive many women of the financial support they need. Supreme Court of India in **Bhuwan Mohan Singh Vs. Meena (2014)**¹³ emphasized the need to protect women who are often economically disadvantaged.

In India, the legal framework allows husbands to claim maintenance from their wives under certain conditions, although this is not a common practice. The Indian Marriage Act, 1955 contains provisions for the maintenance of the spouse, especially if they are unable to fully support themselves. However, these cases are relatively rare, and the law does not support the unemployment or inactivity of a competent person and livelihood.

Navya V M vs Shivaprasad M K (2017)¹⁴: Kerala High Court emphasized that a husband should not be awarded maintenance if he does not have a disability preventing him from

¹¹ Jaising, I. *Voices of Justice: A Book of Readings on Law and Society*.

¹² Joseph Shine v. Union of India (2018), Supreme Court of India.

¹³ Bhuwan Mohan Singh v. Meena (2014), Supreme Court of India.

¹⁴ Navya V M v Shivaprasad M K. (2017). Kerala High Court. Lead India Law Associates.

earning. The court found that awarding alimony without actual disability would encourage idleness.

Kamelandra Sawarkar Vs. Kamelandra (1992)¹⁵: The Bombay High Court held that a husband should not be totally dependent on his wife's income and if the wife is capable of work and earning, the award of maintenance would only encourage idleness.

Shiv Kumar Yadav Vs. Smt. Santoshi Yadav (2004)¹⁶: This case involved denial of maintenance to an estranged wife without sufficient reason affecting her maintenance under Section 125 CrPC.

Lalit Mohan Vs. Tripta Devi (1988)¹⁷: The Jammu and Kashmir High Court dealt with a notable early case where his wife outlived her husband.

Rani Sethi Vs. Sunil Sethi (2011)¹⁸: In this case, the court ordered maintenance from the wife to the husband based on the specific circumstances and facts of the case.

There is a danger that gender neutrality exaggerates complex socio-economic realities. While the goal is legal equality, it is important to ensure that such changes do not inadvertently disadvantage those who are statistically more likely to be financially vulnerable after divorce, primarily women.¹⁹ This was said in **Vineeta Sharma v. Rakesh Sharma (2020)**²⁰, in which the Supreme Court of India upheld the rights of daughters to parental property, recognizing the economic vulnerability of women.²¹

It can be argued that moving to a gender-neutral law under section 125 CrPC could significantly promote gender equality in the legal system. However, it must be balanced with a nuanced understanding of the socio-economic realities of different genders. The effectiveness of such a law would depend on its ability to provide fair and just justice and to recognize both the need for gender neutrality and the inequalities that exist in society.²²

¹⁵ Kamelandra Sawarkar v Kamelandra. (1992). Bombay High Court. Lead India Law Associates

¹⁶ Shiv Kumar Yadav v. Smt. Santoshi Yadav. (2004). High Court of Chhattisgarh.

¹⁷ Lalit Mohan v. Tripta Devi. (1988). Jammu & Kashmir High Court

¹⁸ Rani Sethi v. Sunil Sethi. (2011). Sahodar.

¹⁹ Ramanathan, U. *Women and Law in India: An Omnibus*.

²⁰ Vineeta Sharma v. Rakesh Sharma (2020), Supreme Court of India.

²¹ Seth, L. *Talking of Justice: People's Rights in Modern India*.

²² Agnes, F. *Family Law: A Legal Empowerment Approach*.

Conclusion

The study of the gender neutrality of sec. 125 of the Criminal Procedure Law shows that the current gender-specific provisions may not be fully compatible with emerging social expectations and the principles of gender equality. The analysis shows possible consequences, including unequal access to justice and economic inequality. Comparative studies show that adopting a gender-neutral approach, as in other jurisdictions, can increase fairness and efficiency in dealing with marital financial obligations. The conclusion emphasizes the need for ongoing legal reforms and proposes a re-evaluation of section 125 to better adapt existing standards and promote equality in spousal support matters.