

“Relevance of Provisions of Maintenance (for Women) under Cr.P.C.”*Shashank Shekhar**Central University of South Bihar***ABSTRACT**

Society is formed when the number of individual human being live together and every individual human being have their own family. Thus, in family, individuals are in some relationship with each other and status itself arises rights and duties towards each other. One therefore have to fulfil each other needs and requirements for betterment of the family. In that family institution also some are very close relations like relationship of father/mother and son/daughter or husband and wife. One such duties is to maintain the person who actually depend on him and such dependencies can be like wife dependent on husband or son/daughter dependent on parents or old aged parents dependent on son/daughter. But the entitlement of claiming maintenance is certainly based on the assumption that the claimant doesn't have the sufficient means to support himself/herself. The maintenance generally covers the expenses for necessities or essentials for the substance of life. However, it is not merely for the survival of the claimant but it has certain societal purpose. Now there is a question whether we don't have any other way to handle the situation other than using criminal proceedings of civil nature and how far this would serve the purpose?

KEYWORDS: Family, Rights, Duties, Close, Relations, Claim, Maintenance, Dependent, Sufficient, Essential, Substance, Criminal proceedings, Civil - nature

1. The concept of maintenance

When an individual starts neglecting to perform his personal duties towards family because of any reason, the institution of family starts dismantling. So, to protect the interest of those weaker or dependent every society (in form of religion) had developed some laws in due course of time. Every individuals generally have a religion and his personal conduct of such nature is governed by the personal laws of religion which he follows. These personal laws with some modifications are generally codified and the proceedings for maintenance and all similar proceedings govern through the same. The meaning of the term maintenance is support or sustenance. The term maintenance is similar to the words alimony and corpus Juris defines alimony as “the allowances required to be made to a wife, out of her husband’ estate for her support either during the matrimonial suit or out of her husband’s estate for her support either during the matrimonial suit or on its termination, where the facts of the marriage is established and she proves herself separate maintenance.”¹ [DIWAN 2019: 211] There are various laws as per Hindu Law, Muslim Law, Parsi Law, Christian Law etc. However we cannot go into these laws because that is beyond the scope of the project.

In context of India there are number of personal laws and here we have to restrict to them only. Hereinafter we will only discuss the provisions for maintenance to wife, children, old

¹ Dr. Paras Diwan, Modern Hindu Law, 24th Edition, 2019, Allahabad Law Agency, Pg. 211

aged person, the provisions for which is incorporated in the Section 125 to section 128 in Cr.P.C. However after general discussion of maintenance to children, old aged person etc. the paper would limit to maintenance provisions to wife only, but similar approach for maintenance to other can be taken.

2. Why the provision of Maintenance under Criminal Procedural Code

The sections 125 to 128 of the Cr.P.C have provisions for maintenance of wives, children and parents. As these provisions are civil in nature so an obvious question arises that why they are incorporated in criminal procedural laws. It is provided that for a speedy, effective, and rather inexpensive remedy against persons who neglect or refuse to maintain their dependants i.e. wives, children and parents; the provisions are herein the Cr.P.C.² [KELKAR 2019: 833] The Hon'ble Supreme Court held in *Vimala vs. Veeraswamy*³ that the Section 125 Cr.P.C. is meant to achieve a social purpose and its objective is to prevent vagrancy and destitution. Further most poor and destitute women opt to claim maintenance under the summary proceedings under section 125 Cr.P.C.⁴ Thus in this references it is rightly said that:

By providing a simple, speedy but limited relief, the provision seek to ensure that the neglected wife, children and parents are not left beggared and destitute on the scrap heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence.⁵ [KELKAR 2019: 833]

Unlike the personals laws, which are different according to the religion, it is secular legislation and is applicable to all persons belonging to all religions and have no relationships with the personal laws of the parties. First time in the popular Shah Bano⁶ case the Hon'ble Supreme Court laid down that a Muslim woman unable to maintain herself was entitled to take recourse to Section 125 of the Cr.P.C that requires husbands with sufficient means to pay maintenance to wives or ex-wives who are unable to support themselves. It was ruled on the basis that Muslim personal law doesn't deal with the destitution which is prima facie concern of section 125 of Cr.P.C.⁷

3. Who is entitled to claim maintenance under Section 125 of Cr.P.C

There are number of persons entitled to claim the maintenance under the section as the respondent's wife, his legitimate or illegitimate children, and his legitimate or illegitimate abnormal child who has attained majority and his father or mother. The wife has wider explanation as it includes also those parties who had lived together as husband and wife to the knowledge of public. Further it also includes a woman who has been divorced by or has

² R.V kelkar, Criminal Procedural Code, Sixth Edition, Reprinted, 2019, Eastern Book Company, pg. 833

³ (1991) 2 SCC 375.

⁴ Flavia Agnes, Conjugal, Property, Morality and Maintenance, Economic and Political Weekly, Vol. 44, No. 44 (October 31-November 6, 2009),pp. 58-64 pg. 60

⁵ R.V kelkar page 833

⁶ Mohd. Ahmed Khan vs. Shah Bano Begum (1985) 2 SCC 556

⁷ Sheena Jain, Bourdieu's Theory of the Symbolic and the Shah Bano Case, Sociological Bulletin, Vol. 56, No. 1 (January-April 2007), pp. 3-22, pg. 6

obtained divorce from her husband and has not remarried.⁸ The reason for it is being asserted as:

The extension of word “wife” to cover even a divorced wife is intended to prevent the unscrupulous husbands frustrating the legitimate maintenance claims of their wives by just divorcing them under the above said personal laws.⁹ [KELKAR 2019: 838]

Secondly, a child whether male or female who has not attained the majority can claim the maintenance and in case of minor girl who is married can claim maintenance from both husband and wife.¹⁰ However, thirdly, even when a child has attained majority but is by reason of any physical or mental abnormality is unable to maintain itself, is entitle to maintenance.¹¹ There is one limitation i.e. no maintenance claim when such child is married girl who has attained majority. Fourthly father and mother can claim maintenance from their children. The children here includes both the son and daughter as it was held in *Vijaya Manohar Arbat v. Kashirao Rajaram Sawai*¹² that the married daughter have to maintain his father. The court ruled that undoubtedly it is the moral obligation of a son or a daughter to maintain his or her parents.

4. Essentials Conditions for granting maintenance

Maintenance cannot be granted when certain elements are not present as it would not be just in doing so. It is also important to take in consideration that Section 125 (1), Cr.P.C required only a husband, father, son or daughter, the case may be, to pay maintenance to the respective persons namely, wife, child, father or mother under certain circumstances.¹³ According to section 125 (1), Cr.P.C the person from whom maintenance is claimed must have sufficient means to maintain the person or persons claiming maintenance. Here the means actually is not limited only to the visible means like land but also if person is healthy and able bodied he must have to support his wife, children and parents.¹⁴ [KELKAR 2019: 844] Further it is also important that the person from whom maintenance is claimed must have neglected or refused to maintain the person or persons entitled to claim maintenance. Again neglecting includes such condition when the husband makes difficult for life to live with them. Various activities, for instances, when he has taken second wife or being impotent can be treated as neglecting the wife and hence can claim maintenance. As the provisions in Cr.P.C is secular so it would be applicable to Mohammedan wife who can claim maintenance solely on the ground that the very idea of contracting second marriage by her husband is abhorrent to her mind. [KELKAR 2019: 846] The primary aim of section 125, Cr.P.C is to prevent vagrancy, therefore the

⁸ Anjani Kant, Right Of Maintenance To Indian Women, Journal of the Indian Law Institute, Vol. 38, No. 3 (July-September 1996), pp. 392-404 pg. 392

⁹ R.V kelkar, Criminal Procedural Code, Sixth Edition, Reprinted, 2019, Eastern Book Company, pg. 833

¹⁰ Ibid. at page 842

¹¹ Ibid. at page 842

¹² (1987) 2 SCC 278

¹³ Anjani Kant, Right Of Maintenance To Indian Women, Journal of the Indian Law Institute, Vol. 38, No. 3 (July-September 1996), pp. 392-404 at page 395

¹⁴ R.V kelkar, Criminal Procedural Code, Sixth Edition, Reprinted, 2019, Eastern Book Company, p.g. 844

requirement to pay maintenance should be only in respect of persons who are unable to maintain themselves but it doesn't mean she should be absolute destitute¹⁵.

There are however some restriction when the maintenance cannot be provided to wife if she is living in adultery, or if she refused without any just grounds to live with the husband, or if she be living separately by mutual consent.

5. Procedure which followed while proceeding under section 125 and enforcement

The Section 126 provides that all evidence in such proceedings shall be taken in the presence of the person against or his pleader. In this references Justice Bakshi held in *Het Ram vs. Ram Kumari*¹⁶ that:

By insisting on the presence of the husband while the statements of the witnesses are being recorded, an opportunity is indirectly provided to the husband to patch up the differences and to effect a change of heart and restore a life of conjugal happiness by offering to maintain his wife. Not only that it is also possible to envisage a situation where by the intervention of relations of either parties in such proceedings, the husband and wife may by mutual consent agree to live separately... In my opinion these two opportunities of reconciliation and separation by consent were looming large in minds of the legislature when it is insisted on the presence of the husband during the period evidence was taken on behalf of the applicant. (As per Justice Bakshi)

The first rule for the enforcement of the order of maintenance under section 125 is to issue a distress warrant in the manner provided in code for levying fines and in case when husband flatly refused to make any payment to wife in case of huge arrears of maintenance the order sentencing the defaulting husband to imprisonment is also there¹⁷. In those cases when the order of maintenance is made in favour of wife then opportunity is given to the husband to make a genuine bona fide offer to maintain his wife on condition of her living with him. [KELKAR 2019: 865] Further in is very important to note that the enforcement of the order of maintenance the sentences of imprisonment can be passed and a warrant of arrest can be issued only if recourse to attachment and sale of property fails. However at the same time a person ordered to pay maintenance may not be absolved of his liability merely because he is sent to jail.¹⁸

6. Analysis, findings and suggestions for the whole procedure

Now, firstly it is accurate to say that Section 125 is a provision to protect the weaker of the two parties, but it also provide a remedy more economical then that available in the Civil Courts. Secondly, it is also important to take into consideration the conditions of women in India and in almost every religion patriarchal society has prevailed and thus has made the life

¹⁵ Ibid. at 850

¹⁶ 1975 CriLJ 656, 638 (All)

¹⁷ It was held in *Bhure vs. Gomtabai*, 1981 Cri LJ 789 (MP)

¹⁸ R.V kelkar, *Criminal Procedural Code*, Sixth Edition, Reprinted, 2019, Eastern Book Company, pg. 833

of women more dependent. So, if such a legislation which protect the rights of women to this extent is undoubtedly a beneficial part of it. While interpreting the beneficial piece of legislation Court has to be construed in its correct perspective so as to fructify the legislative intent underlying the enactment.¹⁹ [BINDRA 2017: 797] Thus similar approach was taken in Shah Bano case and it was observed that section 125 of Criminal Procedure Code, was enacted in order to provide a quick and summary remedy to a class of persons who were unable to maintain themselves and hence it applied and finally become secular legislation. From all these concerns the provisions are found as useful for the interest of Gender Justice approach which would not only provide equality to all the women fraternity but also to live with dignity in their home as well irrespective of any religion (personal laws). The patriarchal thinking have dangerously placed a thought of men so, people criticise it under the home of personal laws. But definitely for this reason it is convincing legislation.

Then whether it serve the purpose of every women in the society at the same time. When we try to analyse the situation by taking into consideration of every class of women (poor, rich; educated, uneducated etc.) then the questions arises whether it is just to have a criminal proceeding serve the purpose. In personal laws such considerations are generally taken and thus liberal interpretation took place. Why the same view is taken into consideration? The reason can be understood from the following:

It is accepted by most, that the litigation in respect of any matter concerning family, whether divorce, maintenance, custody of children and trial of juvenile offenders should not be view in terms of failure or success of legal action, but as social therapeutic problem. [DIWAN 2019: 235]

So, why treatment should under criminal trial where the prima facie concern is to protect the victim and provide justice. There is no any problem with the punishment but the two offences of different nature cannot be placed in equal footing i.e. day to day conflicts in home and other criminal offences are far different in nature. Such day to day conflicts are part of general life in modern society. So whether code should be remain silent and let personal law governs? The answer would be definitely not, what we would require is to put these legislation under a separate heading which would govern for the Gender Justice as a uniform code. This decision is more beneficial because of following reasons: Firstly as it is already accepted by now that provision of maintenance in Cr.P.C is because it provide effective remedy, so why not such effective remedy can be provided under separate heading? Secondly it has been accepted, even in criminal procedural code that opportunity is to be given to husband for make a genuine bona fide offer to maintain his wife in case of living with him i.e. a type of reconciliation and separation by consent which is again not criminal proceeding in nature. Thirdly, we already know from the women in society that they not all the time want

¹⁹ N.S. Bindra, 'Interpretation of Statute, 12th edition, 2017 LexisNexis, at page 797

divorce and maintenance rather "project of reforming the husbands"²⁰ is sometimes their demand. In other words it would be better to say scope of reconciliation is there. And finally one cannot see this only as liberal approach which is against the victim because we already have many other provision which are there and they will remain as it is. Therefore, rather it is just to place in separate heading with little reform and putting all such civil nature offence as such at a place for better implementation of laws and protection of women. This would be a type of uniform code for Gender Justice. Then only the purpose can be better served which will be in according to present need of society.

CONCLUSION

There are different personal laws that have provision of maintenance with them. We finally got the answer that why it is put into Cr.P.C. i.e. for a speedy, effective, and rather inexpensive remedy against persons who neglect or refuse to maintain their dependants i.e. wives, children and parents. Secondly, when it is incorporated in Cr.P.C. it is applicable to all irrespective of knowing religion of parties. Thirdly, there are number of persons entitled to claim the maintenance under the section as the respondent's wife, his legitimate or illegitimate children, his legitimate or illegitimate abnormal child who has attained majority and his father or mother. Fourthly, maintenance cannot be granted when certain elements are not present as it would not be just in doing so. It is also important to take in consideration that Section 125 (1), Cr.P.C required only a husband, father, son or daughter, the case may be, to pay maintenance to the respective persons namely, wife, child, father or mother under certain circumstances. Fifthly, The Section 126 provides that all evidence in such proceedings shall be taken in the presence of the person against or his pleader. In those cases when the order of maintenance is made in favour of wife then opportunity is given to the husband to make a genuine bona fide offer to maintain his wife on condition of her living with him. And finally the provisions of maintenance in Cr.P.C. is remarkable for the Gender Justice for women which is certainly primary concern for society. However, if it is placed under a separate legislation under the separate heading of Gender Justice and made a slight improvement would serve the purpose fully for which it is incorporated.

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