

## “Maintenance as a Social Security Indication”

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### **ABSTRACT**

This project has its focus on MAINTAINANCE UDER Code of Criminal Procedure (CrPC), 1973 and to treat it as a **social security**. The Code of Criminal Procedure (CrPC) is mainly an adjective law of Procedure. The purpose of the code is to provide machinery for prosecution, trial, and punishment of offenders under substantive criminal law. i.e., the Indian Penal Code and other laws passed by the State from time to time. So, here in this project I am going to discuss maintenance under CrPC, 1973 in detail. So, this project dealt in detail by taking some relevant Journals, websites, books and articles which makes our work easier. The paper concludes with the importance of having ‘Maintenance’ under the CRPC, 1973 and their contribution towards the upliftment of society.

### **INTRODUCTION**

Maintenance is a source of social justice in itself. It is a man's fundamental duty to provide for his wife, children, parents, close relatives, and other dependents if they are unable to maintain for themselves. The goal of maintenance is to prevent immorality and destitution, as well as to improve women's and children's economic circumstances. In India, there are two types of maintenance laws that apply to Hindu women. The first category considers child support in the event of a divorce or other matrimonial remedy, such as nullity of marriage. In the first group, maintenance can be claimed under Section 25 of the Hindu Marriage Act 1955, while in the second category, maintenance to the wife, parents, and children can be claimed under Section 125 of the CrPC and the Hindu Adoption and Maintenance Act, 1956. In this paper an attempt has been made to ascertain the nature and scope of the alimony and Maintenance of wife, widow and dependent under Section 125 of CrPC. Also, an attempt has been made to bring out the lacunae in the core maintenance laws governing the head of the Hindu family and sufficient remedies have been provided for the same.

### **Scope and Objective:**

- ❖ To evaluate the procedure of maintenance under Code of Criminal Procedure (CrPC), 1973 for Women, Parents and children's
- ❖ To find out the differences of the provision of maintenance given under Code of Criminal Procedure (CrPC), 1973 and Hindu Adoptions and Maintenance Act (HAMA), 1956

**Research Question:**

- What is the need of the maintenance?
- Who are all eligible for maintenance?
- How should be decided that what the amount should be paid for maintenance and what are the factors to be considered?
- Consequences of non-payment for maintenance.

**Research Methodology:**

The methodology used in this research paper is a traditional method of research that is Doctrinal research. For this research paper the researcher has turned into various types of journals, existing online articles, research papers, websites and even some documentaries.

**CONCEPT OF MAINTENANCE**

The right to maintenance is built on the concept of an undivided family, in which the head of such a family is bound to maintain the person who is unable to produce a decent living and enjoy the necessities of life that he or she is reasonably expected to enjoy. The concept of maintenance was built to make such a person's life possible and autonomous. Maintenance is a legal obligation that a person owes to his dependent family, and it binds both the person and the property. The term 'maintenance' in Indian law denotes to a claim to food, clothing, and shelter, which is often provided to the wife, children, and parents. It's a measure of social justice and the outcome of a man's natural duty to support his wife, children, and parents when they can't maintain themselves. Maintenance has been a priority for the entire society, not just the weaker sections. When a person, despite having ample wealth, is unable to maintain his dependents, he is compelled to turn to the state for help or to pursue a career that is despised or outlawed by society and is detrimental to the society's interests. Thus, in the acknowledgement of this and with the purpose to prevent the outcomes that may tend to arise out of poverty and destitution a right, parallel to one provided under personal laws, and is also made available under Criminal Jurisdiction in India. The object of maintenance is to prevent immorality and destitution and ameliorate the economic condition of women and children.

The persons who are qualified for maintenance under the Hindu Adoptions and Maintenance Act (HAMA), 1956 are wife, widowed daughter-in-law, children, aged parents and dependants as enumerated in Section 21 of the Act. Whereas, under the Muslim law, the persons entitled to maintenance are wife, young children, the necessitous parents, and other necessitous relations within the prohibited degrees. The Muslim Law of maintenance is based on the Muslim personal laws and the law enactments such as the Indian Majority Act, 1875, the Criminal Procedure code 1973, Muslim Women (Protection of Rights on Divorce) Act, 1986.

The provisions of Section 125, Cr. P.C., 1973 apply and are to be enforced irrespective of whatever maybe the personal law by which the persons in India are governed. Simultaneously, it must be understood that personal laws of the parties concerned, Hindus, Muslims, Christians are to be duly cared of as the same are important to decide the validity of the marriage tie, if any, (existent or not) and so cannot be completely set aside from due consideration.

## MAINTENANCE UNDER HINDU LAW

Many Hindu sages of Ancient India including Manu and Brihaspati believed maintenance of certain persons is a personal obligation. “A man may give what remains after the food and clothing of family. The one (giver) who leaves his family unfed may taste honey at first but afterwards finds it poison.” MIT Akshara, which is one of the most important and oldest school of Hindu Law says that “Where there may be no property but what has been self-acquired, the only persons whose maintenance out of such property is imperative, are aged parents, wife and minor children.”

The provisions of maintenance under Hindu law finds its roots in (a) the Shastric Hindu Personal laws which have its underlying foundations in the Dharmashastra. With the passage of time the need for codification of Hindu Law with respect to marriage, adoption, succession and maintenance was felt and thus two principal acts- (1) The Hindu Marriage Act and (2) The Hindu Adoptions and Maintenance Act, 1956 were promulgated. However, Modern sources of Hindu Law consists of three main sources such as

- (i) Equity, Justice and good conscience
- (ii) Precedents
- (iii) Legislation.

Section 3(b) of the **Hindu Adoptions and Maintenance Act, 1956** defines maintenance. This section says, “Maintenance include- (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment, (ii) in the case of an unmarried daughter, also the reasonable expenses of an incident to her marriage, (c) “minor” means a person who has not completed his or her age of eighteen years.” In *State of Haryana v. Smt. Santra*<sup>6</sup>, it was held that it is a liability created by Hindu Law and arises out of jural relation of the parties. Section 18 of the HAMA, 1956 deals with the maintenance and separate residence of wife.

### Interim Maintenance:

The interim maintenance is payable from the date of presentation of the petition till the date of dismissal of the suit or passing of the decree to meet the immediate needs of the petitioners. In *Purusottam Mahakud v. Smt. Annapurna Mahakud*<sup>8</sup>, Supreme Court held that the right to claim interim maintenance in a suit is a substantive right under section 18 of the Act. Since no form is prescribed to enforce the said right civil court in exercise of its inherent power can grant interim maintenance.

**Maintenance Pendente lite:**

Pendente lite means depending on the outcome of the litigation. The rule is that after considering the financial status of the husband during the litigation process, the wife is awarded maintenance pendente lite even though there is no specified provision mentioned in the act for the grant of pendente lite. Divorced woman can claim maintenance so long as she continues to enjoy the status of wife. The husband of the woman who divorced her has a statutory duty to maintain her if she cannot maintain herself and, she remains unmarried. The obligation to maintain the wife remains on the husband even though the wife might be living separately. It is settled law that a court empowered to grant a substantive relief is competent to award it on interim basis as well, even though there is no express provision in the statute to grant it.

**Maintenance to widow:**

Widow has no charge on separate property of husband. Neither section 18 relating to maintenance of neither wife nor section 21 dealing with widow provides for any charge for maintenance on separate property of husband.

**Right of Separate residence:**

The wife is entitled to live separately without forfeiting her right to maintenance, if her husband is guilty of desertion, if he subjects the women to cruelty, if he is suffering from a leprosy, if he has any other wife living, keeps a concubine in the house where his wife resides, if he has ceased to be a Hindu, or if there is any other cause justifying her to live separately under Section 18(2) of the HAMA.

The wife had been living alone and all the children had been brought up by her without any Assistance and help from the husband and there were a clear case of desertion, the wife was Entitled to separate residence and maintenance. The claim for maintenance by a wife can also Be sustained under clause (g) even on a ground covered by one or other clauses i.e., clause (a) to (f) of section 18(2) substantially but not fully. Merely because the wife fails to strictly prove the specific grounds urged by her, she cannot be denied relief.

In *Komalam Amma v. Kumara Pillai Raghavan Pillai*, the Supreme Court ruled that Maintenance necessarily encompasses a provision for residence and therefore ordered that the woman is provided with a residential facility like that which she had been accustomed in the past.

**Maintenance of widowed daughter in law:**

Section 19 of the HAMA provides that a widowed daughter-in-law is entitled to be maintained by her father-in-law. In *Raj Kishore Mishra v. Meena Mishra*, it was held that where from the estate of the parents, the daughter-in-law can maintain herself; question of father-in-law does not arise.

Section 20 of HAMA obligates the head of the Hindu Family to maintain the children and the aged and the infirm parents. Here not only the father but the mother is also obligated to maintain them. Section 22 of Hama obligates the head of the Hindu Family to maintain his dependants which is defined under section 21.

## **MAINTENANCE UNDER CRPC**

The provisions of the Code of Criminal Procedure, 1973, bind a person to fulfil the moral obligation to society that he owes to his wife, children, and parents. The duty is unquestionably lawful and binding on the individual. The CRPC's provisions are secular, harmless, and all-encompassing in nature, and they apply to all groups in India, regardless of religion, caste, or creed. Whatever personal laws the individual persons concerned are guided and governed by the provisions of Section 125 of the CRPC are enforceable. Maintenance can be claimed under the personal laws of people of all different faiths, and proceedings under such personal laws are civil in nature; however, proceedings initiated under Section 125 of The CRPC are of a summary nature, and apply to everyone regardless of caste, creed, or religion. The provision included in Chapter IX of The CRPC tries to prevent the neglected wife, parent, and children from being abandoned. The CRPC's Section 125 offers a quick remedy for famine and civil damage. It's not the same as a husband's civil liability. It substitutes for a straightforward technique with few complexities. It gives effect to a man's fundamental duty to support his wife, children, and elderly parents who are unable to maintain themselves. The underlying principle behind the maintenance stance under Section 125 of the CRPC is that no wife, young children, or elderly parents should be left without and subjected to utter strain of wants, causing them to be persuaded to commit crimes, etc.

Provision under Section 125 of the CRPC authorises a Magistrate of the First Class to take Summary action for prevention of poverty.

- What is the need of the maintenance?

**Section 125 in the Code of Criminal Procedure, 1973:** Order for maintenance of wives, children and parents:

(1) If any person having sufficient means neglects or refuses to maintain-

- (a) His wife, unable to maintain herself, or
- (b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) 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
- (d) 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 not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. Explanation - For the purposes of this Chapter, -

(a) " Minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority.

(b) " Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issued a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month' s allowances remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such

Magistrate may consider any grounds of refusal stated by her and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing. Explanation - If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife' s refusal to live with him.

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favor an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.<sup>1</sup>

- Who are all eligible for maintenance?

### **Maintenance under Section 125 of the Code of Criminal Procedure, 1973**

Under Section 125 of the Code of Criminal Procedure, 1973, the right of maintenance, under the family law in India, extends not only to the wife and dependent children but also to

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<sup>1</sup> <https://indiankanoon.org/doc/1056396/>

indigent parents and divorced wives. The maintenance claim depends upon the husband's capability to provide sufficient means.

One question that is generally asked is 'What is the maximum maintenance under Section 125?' Previously, the maintenance claim was limited to Rs. 500 per month but now the magistrate has the power to award a reasonable amount of maintenance as they deem fit.

A Class I Magistrate may order a person to pay a monthly allowance for the maintenance of his wife, child, father, or mother when there is a valid proof of neglect and refusal by the man to maintain them.

However, under Section 125 of the CrPC, a wife will not be entitled to receive maintenance if she has committed adultery, refuses to live with her husband or separates from her husband by mutual consent.<sup>2</sup>

\*WIFE

\*CHILDRENS

\*PARENTS

\*DIVORCE WIFE

- How should be decided that what the amount should be paid for maintenance and what are the factors to be considered?

Over and over again, whenever there is a dispute in the marriage, on question arise again and again. How much maintenance must be given to wife?

The question also takes many shapes, from

- I earn X amount, how much maintenance
- I have no children, how much maintenance
- She files for divorce, so why should I pay maintenance
- She left on her own, so why should I pay maintenance
- She is so and so passes, how much maintenance
- She is adulterous, how much maintenance
- Her father is so and so, how much maintenance
- If I quit my job, do I have to pay maintenance?
- So and so court said, 1/3rd of husband salary as maintenance
- So and so court said, 1/4th salary of husband shall be given as maintenance
- How does Percentage of part be decided when there are children and other dependents involved.

As we can see that there are varied circumstances, so how do courts go about deciding maintenance in diverse cases?

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<sup>2</sup> <https://www.myadvo.in/blog/laws-relating-to-maintenance-in-india>

Delhi High Court in most cases has held steadfast to the Mathematical formula of apportionment. In diverse Cases it has held that husband's income be apportioned in the parts which is equivalent to his dependents plus one. Each dependent should be given one part and two parts being kept with the husband as he is the earner. So based on this aspect 1/3rd of the salary of husband can be given to wife if there is no child involved and husband has no dependents. Also, if there is one child and no other dependent then wife and child together would be entitled for ½ of his salary. This goes on and can be the simplest formula for deciding maintenance. Similarly, if wife is earning then the same formula can be used for apportionment of income of both the parties.

**CAPACITY:** There is a presumption that every able-bodied person must earn and maintain his wife and children. Unfortunately, same presumption is not accounted for by courts for women in India. The courts don't hold a presumption that every able-bodied woman should also earn. One may argue that the husband though able bodied had always been unemployed. The courts have considered this question and presumed that if such a person is married and takes a wife; it is assumed that the family had sufficient means to support him and his wife. The income based on lifestyle etc is provided in such circumstances. The courts thus consider not only the actual capacity but make presumptions about the capacity of the husband.

**INCOME OF PARTIES:** Here we are talking about income of the parties. The actual net takes home income of the parties. However, courts are mindful of certain deductions on which parties have no control. Contribution to Provident Fund and other direct taxes like professional tax, income tax etc are deducted, as parties have no control over it. The courts are also somewhat liberal in considering deductions of pre-existing liabilities like home loan, marriage loan, and premiums towards life insurance policies. However, courts are mindful to check how long back these liabilities were taken. The courts are of the view that one party cannot create assets while making other party destitute. In this case, the same formula is applied to the income of the applicant. It is often seen that courts have accounted for amounts deposited in wife's account on regular basis as income. Both Delhi High Court and Punjab & Haryana High Court thus asks for exhaustive list of income, asset and liabilities affidavit of parties to decide maintenance.

**NEED OF PARTIES:** There was a time, when it was assumed that the maintenance is only to prevent vagrancy and destitution. However, same does not hold good anymore. Over and over, courts have come to conclusion that the wife shall get sufficient maintenance to maintain herself and live-in same comfort as she was living in her matrimonial home. There again the affidavit as mandated by Delhi and Punjab & Haryana High Court comes into play. If parties have genuine medical needs, genuine need of some employees in running their business and wherewithal, the same is also accounted by courts.

**CONDUCT:** This seems bizarre to many men who come to weekly meetings, when I say that it is one of the deciding factors. Then how can court did not consider the adultery, cruelty, promiscuity, desertion and other aspects like she is the erring party, she is this and that while deciding maintenance. The reason is that conducts of parties are mostly visible to courts after leading evidence only. At the stage of interim or under Section 24 of Hindu Marriage Act, the courts cannot look into these aspects. The courts are mainly concerned about the above aspects which I mentioned. This said, judges are also human beings, the conduct of the parties do impact the quantum of maintenance. It also impacts from which date maintenance is granted. If wife is found to be deliberately delaying the decision on interim maintenance, the same is taken in account. Also, if women are caught prima facie lying on affidavits, the same has also impacted the quantum of maintenance.

**EDUCATION & PREVIOUS WORK EXPERIENCE OF WIFE:** For considerable time, courts were dismissing maintenance to highly educated wives, who had prior work experience. However, somewhere in late 2018, Supreme Court came out with a judgment that capacity and not capability of wife shall be taken in account while deciding maintenance. This said, not everything is lost on this ground. I have often advised people to argue on the same and some have been successful in limiting the maintenance to certain time limit like a year or two. The courts in those cases have advised the girls to find work in between. This has not worked always but has certainly benefitted some.<sup>i</sup>

- Consequences of non-payment for maintenance.
- Default of 125 Cr PC order is viewed seriously by the courts and the amount of coercive action in case of default varies from case to case.
- Under section 125(4) the court can take coercive action for enforcing execution of the maintenance order.
- The maintenance order can be enforced in two ways by warrant of attachment wherein the assets of the petitioner are attached, and amount of arrears are recovered, and another way is by warrant of arrest where real jail time the husband has to suffer in case of default.

Now how much jail time he has to go? The answer to this is maximum of 30 days per application

In Judgement of Ramdhani Sah v/s The State of Jharkhand on 22 June, 2016:

It therefore appears that the maximum period for which a person against whom the realisation of arrears of maintenance amount is due, has been taken into custody can be for a period of one month and not beyond that and it can be less than one month if the payment is made prior

to the completion of one month in custody. In the case of “Laljee Yadav” (supra) while considering Sub-section 3 of Section 125 of Cr.P.C., it has been held as follows:

“Here, we may like to point out another aspect of the matter. As seen above, the maintenance is to be fixed on monthly basis. The sentence has, accordingly, been limited to a month maximum for each breach. Thus, as noticed by the Apex Court in the above referred to cases, there has to be separate sentencing upon separate and fresh application after considering the matter for each month or part thereof for which maintenance remains unpaid. Thus, by no stretch of imagination, can there be a continuous mechanical remand as in the present case.”<sup>ii</sup>

- **ESSENTIAL CONDITIONS FOR GRANTING MAINTENANCE**

There are some essential conditions which should be fulfilled for claiming and granting maintenance:

Sufficient means for maintenance are available.

- Neglect or refusal to maintain after the demand for maintenance.
- The person claiming maintenance must be unable to maintain himself/herself.
- Quantum of maintenance depends on the standard of living.
- Sufficient means to maintain the person

If any person has sufficient means for maintenance, then it is his duty to maintain his wives, children, and parents. If sufficient means are not available, then it will be a perfect and valid Defence for people who are legally bound for maintenance of wife, children, and parents.

### **Neglect or refusal to maintain**

Any person neglects or refuses to maintain his wives, children, and parents in malafide intention or in any type of egoistic behavior on the demand for maintenance by them.

\*The person who claims maintenance must be unable to maintain himself/herself

It is a very important condition for granting maintenance that a person who is claiming maintenance must be unable to maintain himself/herself. For example- If a wife is earning well, then she cannot claim maintenance under this Section. In the case of Abdulmunaf v Salima, it was held that the wife who is hale and healthy and is sufficiently educated to earn for herself but refuses to earn from own and claim maintenance from her husband will be entitled to claim maintenance but that her refusal to earn under the circumstances would disentitle her to get complete amount of maintenance.

\*Special provision for maintenance of minor married girl

If the husband of a minor daughter does not have sufficient means to maintain her, then it is the duty of her father to give maintenance. In these circumstances, married minor daughter is entitled to get maintenance from the father. In the case of Alok Banerjee v Atoshi Banerjee, a

person who is unable to maintain themselves.

**\*Quantum of maintenance**

Quantum of maintenance means the amount of maintenance. Quantum of maintenance depends on the standard of living. For example- If any issues raised in a rich family, then demand for maintenance will be more as compared to poor family according to their standard of living in a prior life.

In simple words, the Court should also make sure that whether maintenance granted is justified according to the status of a family or not?<sup>iii</sup>

**OBJECT AND SCOPE OF MAINTENANCE:**

In Chapter IX of the Code of Criminal Procedure, 1973, the term "maintenance" is not defined. Section 125 of Chapter IX of the Cr. P.C., 1973 serves social justice, which was drafted solely to protect the interests of women and children, as well as elderly and infirm parents. Maintenance provisions are covered under Article 15(3) of the Indian Constitution, as well as Articles 39 and 40. According to Section 125 of the Cr. P.C., 1973, it is a person's fundamental and natural duty to support his wife, children, and elderly parents as long as they are unable to support themselves.

The provisions of Section 125 of the Cr. P.C., 1973 apply and must be implemented regardless of the personal law that governs individuals in India. Simultaneously, it must be understood that the personal laws of the parties involved, Hindus, Muslims, and Christians, must be respected because they are essential in determining the validity of the marriage connection, if any (existing or not), and so cannot be completely ignored.

The purpose of Section 125 of the Cr. P. C., 1973 is to prevent starvation, misery, and vagrancy among relatives, both near and far, who are unable to maintain themselves. It is a social justice measure designed to safeguard women, children, and elderly parents. The true objective of section 125 of the Cr. P.C., 1973 is to help deserted and poor wives, neglected and abandoned children, and helpless, elderly, and disabled parents. As a result, this provision creates social service and a social purpose of well-being. The Magistrate's jurisdiction is not penal or punitive in nature, but it is, of course, preventative. The time-consuming, lengthy, problematic, weighty procedure of civil law and litigation was intended to be avoided by offering a simple, quick, restricted relief. Compulsion is imposed (to some extent) on individuals whose duty is to keep their dependants who are unable to maintain themselves. No wife, kid, or parent may be abandoned on the scrap heap of society, beggarly and impoverished, to be enticed to commit crime or to tempt others to commit crime in their behalf. A statutory obligation to maintain one's own wife and small children exists, and a contract that violates that obligation in order to entirely relinquish the right cannot be considered legal.

Maintenance laws have been enacted in India to safeguard the weaker sectors of society, such as women, children, elderly and infirm parents, and some close relatives who do not have their own source of income and are unable to maintain themselves. It should also be noted that maintenance regulations fall under the constitutional purview of Article 11 of the 15th Amendment (3). The maintenance provisions have mostly been deemed to be in accordance with the Indian Constitution, as they do not violate Article 14 as well as Articles 25 and 26. The incapacity of the wife, kid, mother, or father to care for themselves could result in massive social difficulties. In light of these considerations and related matters, Parliament was forced to design a solution to the problem, and as a result, a summary procedure was created, which was included in Chapter IX of the new Code of Criminal Procedure in 1973.

### **DIFFERENCES BETWEEN MAINTENANCE LAWS UNDER HAMA AND CRPC**

The right to maintenance under section 125 of the CRPC is a statutory right that the Indian Legislature has provided, accepted, and acknowledged irrespective of the parties' religion, whether Hindu or Muslim, etc. However, the provisions of Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, 1956 apply only to Hindus.

The object of Section 125, Cr. P.C., 1973 is to provide a summary machine for serving a moral obligation of a man to his wife, children, and elderly parents so that they do not die of utter poverty because they are unable to maintain themselves. The purpose of this section is to protect the interests of a peaceful society. The Hindu Adoptions and Maintenance Act of 1956 establishes the rights of Hindu wives, children, elderly and infirm parents, and even dependents to be supported under Hindu personal law.

### **PROBLEMS RELATED TO MAINTENANCE LAWS IN INDIA**

In India, there are several maintenance rules that apply to the various communities. The fundamental issue is how to make recommendations and ideas for standard maintenance rules across India under an umbrella, and which state or states should serve as role models. Hindus and Muslims make up the majority of India's population. Both have Shastric and modern maintenance laws.

In India, there are a slew of community upkeep regulations. Maintenance is a social justice measure. In India, the maintenance rules are neither comprehensive, substantial, nor exhaustive. A quick look at the maintenance legislation in India reveals some inconsistencies, gaps, and omissions. In Hindu law, as in Mahomed's, there are extensive provisions for both old and new maintenance requirements (Shastric and Koranic). Similar maintenance provisions can be found in Chapter IX (Sections 125-128) of the CRPC, which purports to be a separate piece of legislation. Under a common umbrella, an attempt should be made to find a role model (common). The CRPC's Chapter IX may serve as a role model. However, there are several inconsistencies and gaps in section 125 of the CRPC that should be addressed.

Some anomalies, lacunae in chapter IX of Cr. P.C., 1973 are stated below as:

1) Under the CRPC, a Magistrate has no inherent power like section 151 of Civil Procedure Code or like 482 of the CRPC by which a High Court has got inherent power. Under Sec. 362 of the CRPC, Magistrate cannot alter or review his own order.

Some distinctive features between Hindu Marriage Act, 1955 and Hindu Adoptions and Maintenance Act is stated below to show some anomalies.

(1) Under Section 24 of Hindu Marriage Act, 1955 maintenance may be obtained by both male and female spouse from the other spouse. Under Section 18 of 1956 Act, only the wife can get maintenance.

(2) Section 24 of the Hindu Marriage Act, 1955 provides even the expenses of proceeding, but section 18 of 1956 Act does not provide such scope at all.

(5) The order passed under section 24 of the Hindu Marriage Act, 1955 is not appealable though revision lies. But the decree passed under section 18 of the Hindu Adoptions and Maintenance Act, 1956 is appealable.

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- Can the wife, waive her Right to the Maintenance?
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### **MOHD. AHMED KHAN VS. SHAH BANO BEGUM AND OTHERS (1985 AIR 945)**

**Petitioner:** Mohd. Ahmed Khan **Respondents:** Shah Bano Begum & Ors.

**Bench:** Y. C. Chandrachud (CJ)

Rangath Misra, D. A. Desai, O. Chinnappa Reddy, E. S. Venkataramiah (JJ)

**Date of Judgment:** 23 April 1985

#### **Background**

Section 125(1) of the Criminal Procedure Code deals with answers to the question as to “Who can Claim Maintenance?”

- Wife from his husband,
- Legitimate or illegitimate minor child from his father,
- Legitimate or illegitimate minor child (physical or mental abnormality) from his father, &
- Father or mother from his son or daughter.

Essentials conditions for granting maintenance include the following points:

- Sufficient means for maintenance are available (person who has to give the maintenance should have means to give the same).
- Neglect or refusal to maintain after the demand for maintenance (if the person defaults or omits to provide maintenance or if he denies his obligation of maintaining

then it amounts to neglect or refusal respectively).

- The person claiming maintenance must be unable to maintain himself/herself (only if the person is unable to maintain themselves).
- Quantum of maintenance (depends on the standard of living).

### **Facts of the Case**

Mohd Ahmed Khan (the appealing party) who was a lawyer by profession, married to Shah Bano Begum (the respondent) in 1932, had three sons and two daughters from this marriage. In 1975, when Shah Bano's age was 62 years, she was disowned by her spouse and was tossed out from her marital home together with her children. In 1978, she filed an appeal in the presence of Judicial Magistrate of Indore, because she was abandoned from the maintenance of Rs. 200 per month, which was guaranteed to be provided by him. She demanded Rs. 500 per month as maintenance. Subsequently, the husband gave her irrevocable triple talaq on November 6th, 1978, and used it as a defence to not pay maintenance. The magistrate, in August 1979, directed the husband to pay an entirety of Rs 25 per month as maintenance. Shah Bano in July 1908 made a plea to the High Court of M.P, to change the sum of maintenance to Rs. 179 each month, and high court increased the maintenance to the said amount i.e., Rs. 179 per month. The same was challenged by the spouse within the Supreme Court as a special leave petition to the High court's decision.

### **Issues**

- Criminal Procedure Code (II of 1974), Section 125. Whether the "WIFE" definition includes a divorced Muslim woman?
- Criminal Procedure Code (II of 1974), Section 125. Whether it overrides personal law?
- Criminal Procedure Code (II of 1974), Section 125. Whether a Muslim husband's obligation to provide maintenance for a divorced wife is in or not in the conflict between section 125 and Muslim Personal Law?
- Criminal Procedure Code (II of 1974), Section 127(3) (b). What is the sum payable on divorce? The meaning of Mehar or dower is not summed payable on divorce?
- Judgment
- The verdict was given by C.J, Y.C Chandrachud, and the appeal of Mohd. Ahmed Khan was dismissed.
- Supreme Court said Section of the code applies to all citizens independent of their religion and consequently Section 125(3) of Code of Criminal Procedure is pertinent to Muslims as well, without any sort of discrimination. The court further stated that Section 125 overrides the personal law if there is any conflict between the two It makes clear that there's no strife between the provisions of Section 125 and those of the Muslim Personal Law on the address of the Muslim husband's obligation to provide maintenance for a divorced wife who is incapable to maintain herself.
- Supreme Court in this case duly held that since the obligation of Muslim husband

towards her divorced wife is restricted to the degree of "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 in the event that the wife does not have sufficient means to maintain herself. It was further stated by the court that this rule according to Muslim Law was against humanity or was wrong because here a divorced wife was not in a condition to maintain herself.

- The payment of Mehar by the husband on divorce is not sufficient to exempt him from the duty to pay maintenance to the wife.
- After a long court procedure, the Supreme Court finally concluded that the husbands' legal liability will come to an end if a divorced wife is competent to maintain herself. But this situation will be switched in the case when the wife isn't able in a condition to maintain herself after the Iddat period, she will be entitled to get maintenance or alimony under Section 125 of CrPC.<sup>iv</sup>

#### **ARE MULTIPLE MAINTENANCES ALLOWED?**

##### **HEMLATABEN MAHESHBHAI CHAUHAN VS. STATE OF GUJARAT. 21-OCTOBER-2010**

Wife's son has already been awarded the maintenance by a Competent Court, therefore unless there is a strong reason; she cannot claim multiple maintenances. However, she can file for a modification of the maintenance under Section 127 of the CrPC.

##### **RACHNA KATHURIA VS RAMESH KATHURIA 30-AUGUST-2010**

**The wife** was already getting the maintenance from the respondent. She still filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short the Act) and along with it she filed an application under Section 29 of the Act seeking maintenance. **It is pertinent to note this law does not give additional rights to women to claim maintenance.** This law is just too fast track the mechanism.

#### **\*THE SEPARATE INCOME OF WIFE, A DETERMINANT FOR MAINTENANCE?**

##### **BHAGWAN DUTT VS KAMLA DEVI AND ORS. (SUPREME COURT) 17-OCTOBER-1974**

**The separate income and means of the wife can be taken into account in determining the amount of maintenance payable to her under s. 488, Criminal Procedure Code, 1898.** The section does not confer an absolute right on a neglected wife to get an order of maintenance against the husband nor does it impose absolute liability on the husband to

support her in all circumstances. The use of the word 'may' in s. 488(1) indicates that the power conferred on the Magistrate is discretionary, though the discretion must be exercised in a judicial manner consistent with the language of the statute and with due regard to other relevant circumstances of the case.

## **WHEN WIFE FILED FOR MAINTENANCE UNDER TWO DIFFERENT LAWS**

### **RENU MITTAL VS ANIL MITTAL & ORS. (DELHI HC) 27-OCTOBER-2010**

For granting maintenance, a party can either approach the Court of Metropolitan Magistrate under Domestic Violence Act soon after commissioning of Domestic Violence; **or** under Section 125 Cr. P.C. claiming maintenance.

The Jurisdiction for granting maintenance under Section 125 Cr. P.C. and Domestic Violence Act is parallel jurisdiction and if maintenance has been granted under Section 125 Cr. P.C. after taking into account the entire material placed before the Court and recording evidence, it is not necessary that another MM under Domestic Violence Act should again adjudicate the issue of maintenance.

**The law does not warrant that two parallel courts should adjudicate the same issue separately.** If Court of MM has already adjudicated the matter under Section 125 CrPC; re-adjudication of the issue of maintenance cannot be done by a Court of MM under the Domestic Violence Act.

## **WILL MAINTENANCE BE REDUCED, AS HUSBAND HAS EMIS TO PAY?**

### **BHUSHAN KUMAR MEEN VS MANSI MEEN @ HARPREET KAUR. (SUPREME COURT); 28-APRIL-2009**

Husband proved that he is having EMIs and other commitments in hand, due to which he does not have a proper saving. Court reduced the Maintenance amount ordered against him; considering the EMIs he is supposed to pay

## **WHEN THE WIFE FILED FOR MAINTENANCE IN BOTH THE CRIMINAL AND THE CIVIL COURT.**

### **GOMAJI VS SMT. YASODA & ORS (BOMBAY HC) 13-SEPTEMBER-1995**

Unless the Civil Court finally adjudicates the question of maintenance in the matrimonial proceedings, neither the jurisdiction of the Criminal Court in the proceedings under Section 125 Cr.P.C. for the award of maintenance is barred during the pendency of civil proceedings nor the right of the wife under Section 125 Cr.P.C. can be denied if, during the pendency of matrimonial proceedings, the wife is able to make out the case in the proceedings

under Section 125 Cr.P.C. that she has been neglected and refused to be maintained by the husband and has no independent financial source of her own to maintain herself.

Any order passed by the Criminal Court awarding maintenance in the proceedings under Section 125 Cr.P.C. would be subject to the adjudication on the question of maintenance by the Civil Court and the wife cannot take advantage of the two orders of maintenance passed by the Civil Court as well as the Criminal Court.

After the final adjudication is made by the Civil Court on the question of maintenance, the wife is entitled to maintenance as ordered in the civil proceedings, till such time the order of maintenance granted under Section 125 Cr.P.C. cannot be faulted.

**WHEN THE WIFE'S EARNING IS LESS AND SHE NEEDS TO TAKE CARE OF HER CHILD.**

**ANU KAUL VS RAJEEV KAUL (SUPREME COURT) 23-MARCH-2009**

Husband has been earning Rs 40,000 per month, whereas the wife has been earning Rs 9000 per month. The wife claimed that her rent of Rs 3000. Consequently, she does not have enough fund to educate her child. The court considered the position of the Husband and held that her daughter's school would take an exorbitant amount of fee, for which the Husband need to pay the maintenance; even if the wife is earning. The maintenance amount fixed was Rs 5000/-

**SUPREME COURT'S INTERPRETATION OF THE TERM "UNABLE TO MAINTAIN".**

**CHATURBHUI VS SITA BAI (SUPREME COURT) 27-NOVEMBER-2007**

The present matter was of the 'Desertion'. Supreme Court interpreted the term "unable to maintain", which is in Section 125 of the CrPC. In the instant case, it would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. There is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. It has to be established that the wife was unable to maintain herself.

**WHEN WIFE GETS THE MAINTENANCE UNDER SECTION 125 OF CRPC AND ALLOWANCES FROM SECTION 24 OF THE HMA?**

**GIAN CHAND VS DILPREET KAUR (P&H HC) 26-APRIL-2006**

In the present case, the wife was getting the maintenance under Section 125 of the CrPC and she has gotten relief under Section 24 of the Hindu Marriage Act, 1955. The Court held that

the amount awarded in the course of either of the proceedings in favour of the wife has to be set off against the amount awarded to her in the other proceedings.

### **WHAT WILL BE THE CONTRIBUTION TO MAINTAIN THE CHILDREN?**

**PADMJA SHARMA VS RATAN LAL SHARMA (SUPREME COURT) 28-MARCH-2009**

In the present case, both the parents were earning. Therefore, the Court directed both the parents to contribute to the maintenance amount for their children. The ratio in which the contribution was made was in 2:1 (Wife: Husband)

### **WILL WIFE GET THE MAINTENANCE IF SHE DESERTS HER HUSBAND?**

**ROHTASH SINGH VS SMT. RAMENDREI & ORS. (SUPREME COURT) 2-MARCH-2009**

In the present case, both the husband and wife got divorced. The ground of the divorce was that the wife deserted her husband. Considering this fact, the Supreme Court held that wife is not entitled to maintenance who deserted her husband.

**SHIV KUMAR YADAV VS SANTOSHI YADAV\_(HC CHHATTISGARH) 15-FEBRUARY-2004**

Maintenance not granted as it is proved that the wife wants to reside separately. No maintenance to deserting wife.

### **FACTORS THAT COURT CONSIDERS WHILE AWARDING THE INTERIM MAINTENANCE?**

**ALOK KUMAR JAIN VS PURNIMA JAIN (DELHI HC) 17-APRIL-2007**

Factors which can be culled out as required to be kept in mind while awarding interim maintenance are as under:-

- (i) Status of the parties,
- (ii) Reasonable wants of the claimant,
- (iii) The income and property of the claimant,
- (iv) Number of persons to be maintained by the husband,
- (v) Liabilities, if any, of the husband,
- (vi) The amount required by the wife to live a similar lifestyle as she enjoyed in the matrimonial home keeping in view food, clothing, shelter, educational and medical needs of the wife and the children, if any, residing with the wife and
- (vii) Payment capacity of the husband.

**CAN THE STATE GOVERNMENT AMEND SECTION 125 OF CRPC TO FIX THE MAINTENANCE AMOUNT?****MANOJ YADAV VS PUSHPA YADAV (SUPREME COURT) 11-JANUARY-2011**

Section 125 of the CrPC comes under the ambit of Central Government. Any amendment made by any State Government to fix a maximum limit to the amount granted for maintenance will be invalid.

**SHOULD MAINTENANCE BE IMPOSED BASED ON PERSON ABILITY OR HIS NET EARNING?****RITU RAJ KANT VS ANITA (DELHI HIGH COURT) 18-SEPTEMBER-2008**

**The maintenance should be based on a person's actual earning** and not his being an able-bodied person. In India, the job is not guaranteed. The only job guarantee is under National Guarantee Scheme, which is given to an unemployed rural person. The husband in the present case is not qualified for it. Moreover, even the wife is equally able-bodied.

**SHOULD CAPABLE AND WORKING WIFE BE GETTING THE MAINTENANCE?****SMT. MAMTA JAISWAL VS RAJESH JAISWAL (M.P HC) (SECTION 24 OF HMA) 24-MARCH-2004**

**No maintenance for capable and working wife.** Everyone has to earn for the purpose of maintenance of himself or herself, at least, has to make sincere efforts in that direction. If this criterion is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversary who happens to be a spouse, once dear but far away after an emerging of litigation.

If it is permitted there would be no sincere efforts of amicable settlements because the lazy spouse would be very happy to fight and frustrate the efforts of an amicable settlement. This is not the goal and objective of Section 24 of HMA.

**CAN NON-BAILABLE WARRANT BE ISSUED, IF THE HUSBAND DOESN'T PAY MAINTENANCE?****SHANVAS VS RASEENA & STATE OF KERALA (KERALA HC) 10-DECEMBER-2010**

Learned Magistrate **cannot order a non-bailable warrant for the failure to pay maintenance** as has been done in this case. It is made clear that Magistrate can proceed against the petitioner or other respondents for non-payment of the interim maintenance only

as provided under Protection of Women from Domestic Violence Act and such an order cannot be enforced as has been done by the learned Magistrate. In such circumstances, the order issuing non-bailable warrant can only be quashed.

### **LIABILITY OF FATHER TO MAINTAIN HER DAUGHTER**

**R. KIRUBA KANMANI VS L. RAJAN (MADRAS HC) 17-JUNE-2019**

It is very clear from the above judgments that even though Section 125 restricts the payment of maintenance to the children till they attain majority **when it comes to the daughter, Courts have taken a consistent stand that even though the daughter has attained majority, she will be entitled to maintenance** till she remains unmarried by virtue of Section 20(3) of the Hindu Adoption and Maintenance Act, 1956.

### **CAN THE WIFE, WAIVE HER RIGHT TO THE MAINTENANCE?**

**RAMCHANDRA LAXMAN KAMBLE VS SHOBHA RAMCHANDRA KAMBLE AND ANR (BOMBAY HC) 21-DECEMBER-2018**

Any agreement through which wife waives her right to the maintenance is void as it would be against the public policy. Such an agreement would amount to ousting of jurisdiction of Magistrate and Family Court to entertain maintenance claim, which cannot be permitted by law. Therefore, based on such an agreement, the claim for maintenance cannot be rejected.<sup>v</sup>

### **CONCLUSION**

In this preparation of this thesis, after careful considerations of the maintenance laws of Hindu community and by due comparison, effective measures will have to be obtained to find out ways and means how to eradicate lacunae, gaps, anomalies in maintenance laws. It will have to find out how suggestions can be found out regarding uniform of maintenance laws in India and so, if at all it can be effectively if so, in what positive way, to bring uniformity and fixity of maintenance laws.

No doubt, Parliament of India can bring necessary legislations but administrative good wishes should be there. More and more judicial activism in this appeal may be welcome. A committee of eminent jurists in India may assist Parliament in this behalf to suggest uniformity and to eradicate gaps, anomalies, laches and lacunae.

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<sup>ii</sup> <https://lexspeak.in/2020/07/how-much-jail-time-i-have-to-spend-if-i-do-not-pay-maintenance-to-wife-under-section-125-crpc/>

<sup>iii</sup> [https://blog.ipleaders.in/proceedings-for-maintenance-of-wives-children-and-parents/#Essential\\_conditions\\_for\\_granting\\_maintenance](https://blog.ipleaders.in/proceedings-for-maintenance-of-wives-children-and-parents/#Essential_conditions_for_granting_maintenance)

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