



Maintenance under The Code of Criminal Procedure in India

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Introduction

In Law, the maintenance is treated as a measure for social justice which gives right to destitute wives, abandoned children and parents, who have been not cared for. Through maintenance, financial support is provided to them so that they do not slide into hardship and adversity. The provisions of maintenance provide basic assurance of adequate standard of living. In Indian society, it is always considered as prime responsibility of the earning member to take care of the other family members who can not or who are not able to take care of themselves. So, the inculcation of this provision in the act is must for the wholesome development of the society.

The legal sense of the scope of the Maintenance act is intended to fulfil a social purpose. These provisions are contained in the Criminal procedure code,1973 under sections 125 to 128, under the Hindu marriage act 1955, under the Hindu Adoption and Maintenance act,1956. Under the protection of women from Domestic Violence Act 2005, The Maintenance and Welfare of Parents and Senior citizens Act, 2007.

Definition Of Maintenance

The word maintenance is not defined in Criminal Procedure Code but to understand it, one always consider the meaning provided under The Hindu Adoption and Maintenance Act, 1956 as:

“Maintenance includes:

(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;”

So, the maintenance means providing the necessities for one’s existence i.e. appropriate food, clothing and lodging. In an extended definition, it will also include the expenditure incurred on health and education.

Various Acts That Provide Maintenance Under Different Sections

1. Section 24 of the Hindu Marriage Act, 1955 provides right to the party who has insufficient independent income to support himself or herself as the case may be to seek for maintenance pendelite from the other

party. It is apposite to mention that section 24 grants right to maintenance to both the parties i.e. husband and wife to seek interim maintenance during the pendency of the matrimonial dispute.

2. Section 125 of the CrPC, inter alia, provides right to the wife, who doesn’t have sufficient means to support herself, to seek maintenance from her husband who has refused to maintain
3. her. Unlike section 24 of the Hindu Marriage Act, the section doesn’t furnish any benefit to the husbands. However, this provision is open to all the wives irrespective of their religion as the same is not restricted to a particular religion.
4. Section 18 of the Hindu Adoption and Maintenance Act, 1956 provides right to a wife to seek maintenance from her husband.
5. Section 23 of the Protection of Women from Domestic Violence Act, 2002 empowers the Magistrate to pass interim and ex parte order qua maintenance to the wife where the wife has been the victim of domestic violence or there is likelihood that the husband (or any other

respondent) may commit an act of domestic violence.

6. Section 36 of the Special Marriage Act, 1954, wife can also avail maintenance which empowers her to seek maintenance from her husband during the pendency of the matrimonial dispute provided she has no sufficient means to maintain and support herself.

Constitutional Framework Of Maintenance

The sentiments and feelings of the constitution makers has been reflected by the preamble of the Constitution of India. The path to achieve the basic necessities of the livelihood is propounded by the Constitution is making India a socialistic State which could provide Justice-Social, Economic and Political.

The Part III of the Constitution of India talks about Fundamental rights which are necessary for the living human beings and infringement of these rights are treated as act of breaking the law and it is punishable by the court. Article 21 of the Constitution of India deals with Right to life which states that no person can be deprived of his right to life which includes right to livelihood as well. This provision is supporting the right of maintenance as if the deserted or divorced wife is not able to earn sufficient for her survival then it is responsibility of the husband to provide her basic care and to save her from starvation and poverty.

The Provisions incorporated under Part IV of the Constitution of India also reflects the objectives enshrined in the Preamble of the Constitution. Article 39 of the Constitution aims at ensuring equal and adequate means of livelihood to both men and women. Further, Article 44 directly implementing a homogenous civil code that could be applied to any community as law for maintenance are there in almost all the personal laws like Hindu, Muslim, Parsi and many more but still under CrPC, section 125 can be applied to all the religions. The landmark case on this is:

Mohd. Ahmad Khan v. Shah Bano Begum¹

In the case, the Supreme Court of India stated that Muslim wife is entitled to maintenance even after the period of iddat, if she is not able to maintain herself.

Article 45 deals with the compulsory education of younger generation which also in favour of Section 125 of Criminal Procedure Code which put compulsory obligation on the parents to provide education along with the bodily necessities.

Maintenance Under Criminal Procedure Code

Chapter IX deals with maintenance of Wives, Children and Parents and are covered under Section 125 to Section 128. This chapter impose the legal duty on the persons to take care of certain relationships. In the other words, it provides right to the dependants that they can get the benefit from their near relatives for their livelihood if they are unable to maintain themselves. Effective and speedy relief can be taken under Section 125 of CrPC which save the party from prolonged litigation before civil court under other personal acts initiated for maintenance.

Section 125 imposes a statutory duty on the individual to maintain his near relatives like: wife, Children and parents irrespective of any caste, religion or community. There are class of members who are entitled to maintenance by any person who has sufficient means of livelihood under criminal code are:

- a) Wife
- b) Children
- c) Parents

In the above mentioned relations, on the proof of neglect or refusal, the magistrate of first class can order any monthly allowance, that will depend on the standard of life the other person was living, to pay to that person for his or her smooth survival. Lets understand these relations in detail:

• **Wife**

Earlier, the word "wife" includes only the legitimate wife. The claimant must be legally wedded wife of the man and marriage can be solemnised by any personal applicability of personal law. Suppose, second wife of Hindu man is not allowed to take the benefit of maintenance as polygamy is not allowed in The Hindu Marriage Act. So, if the legality of marriage is not there then the wife cannot ask for maintenance under this section. The definition given in the section for "wife" states "any woman who has obtained divorce from or has been divorced by, her husband and has not married". The wife who is living away from the husband with lawful excuse can also apply for maintenance from him but the reason of living apart must be valid one.

¹ AIR 1985 SC 945

But nowadays, the broader definition is provided to the word “wife” and many judicial judgements of the Apex court are supporting it so that the women who is in relation with the man from long time can not be leave behind in destitute after breakup. The Landmark case Dwarika Prasad Satapathy Vs. Bidyut Prava Dixit and Another², in this case the meaning of word “wife” sphere was broaden and the women who is leaving together with the man as wife in the society from the long time is also entitled to maintenance and this much proof is sufficient that they were living as husband and wife from a long time.

Further in Chanmuniya v. Virendra Kumar Singh Kushwaha³, the three bench judge of Supreme Court decided that the objectives of Section-125 of Cr.P.C are to achieve a social purpose and to avoid vagrancy and destitution. So, the term “wife” cannot be given limited definition that it will defeat the main object of the section.

There are certain conditions that disentitle the wife from maintenance and are enumerated under section 125(4) of the Act are:

1. Wife living in adultery.
2. Wife refuse to cohabit with her husband without any sufficient reason.
3. Wife living separate by mutual consent.

• Children

In India, it is considered as parents have a right to take care of their children as they are assets of tomorrow’s Nation. The children are considered as building blocks and proper moulding of them can convert them into responsible citizens. If no proper care is provided to them then they can divert their path on wrong way. Section 125 provides for the maintenance of children who are neglected by their parents and made it a legal duty to take care of them. In this section, all the children whether legitimate or illegitimate can get maintenance from their biological father. Section 125(1)(b) provides that any minor child whether legitimate or illegitimate, whether married or unmarried, who is unable to look after himself or herself is entitled for maintenance. For the minor child, legal marriage is not the condition precedent. Even the child born out of matrimonial wedlock is entitled to

maintenance. This provision has increased the scope of the children in this section.

Further section 125(1)(c) enshrined that any child, who is major, whether legitimate or illegitimate excluding married daughter if have some physical or mental abnormality or have injury of such nature that he or she is not able to maintain himself or herself are qualified for maintenance under CrPC. With regard to major child, if he or she is having some disability due to which he or she cannot take care of their necessaries are entitled to maintenance but in the case of married daughter, the liability lies to the husband of the girl for maintenance. In the case of minor married daughter, if her husband has no sufficient means to maintain her then until the time she attains majority, the father may be required to maintain her.

• Parents

The CrPC also provide the right of maintenance to parents either father or mother or both of them from their earning child, who has neglected or refused to provide them care.

Pandurang Bhaurao Dabhade vs Baburao Baburao Dabhade And Anr.⁴

In this case it was decided by 2 judge bench Bombay High Court that the responsibility of father and son rea reciprocal and it is moral as well as legal duty of the son to look after his father, if he can not take care of himself.

In section 125(1)(d) of CrPC states that “his” parents, this was another issue which remained unsolved for long time that whether only son is liable to maintain his parents not the daughter but the intervention of the Apex court has clarify its position with various judgements. For the first time, this right was recognised by the Kerala High Court in Areefa Beevi vs Dr. K.M. Sahib⁵ that the maintenance can be taken from the daughters as well. Further the Supreme Court has decided same in number of cases and now it is established practice that if girls have right to inherit property of their parents, then they have obligation to take care of them too.

Procedure

An application is given to the magistrate of first class by the person who is unable to maintain himself or herself along with the statement that the other person is neglected

² [1999] INSC 385

³ (2011) 1 SCC 14

⁴ (1980) 82 BOMLR 116

⁵ 1983. Cr.L.J. 412

him or her to maintain. If court is satisfied then they take petition on the file and issue summons for appearance of other party. The court on hearing both sides can allow monthly allowance to be paid to the person so that it will not impact the other party on pocket. In some cases, interim maintenance is also granted to the party if the party has actually no money to fight for case itself. The amount once decided by the court can be altered later if there is change in the circumstances of the person.

Conclusion

Section 125 is an enabling provision and is granted to the near relatives to assure that they can have same standard of living which was there before divorce or that which should be provided to children or parents of the person, who has to take care of them. This section has made provisions for every individual in the Indian society irrespective of any sect or religion. So, it is the true picture of uniform civil code. Wilful neglect or taking a back from one's duty is considered as wrong in this section and duty is imposed on such person to take care of his responsibilities efficiently.