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With this thought, we hereby present to you

LEX BONA FIDE: LAW JOURNAL

AN OVERVIEW OF INDIAN LAW ON MAINTAINANCE TO WIFE, CHILDREN AND PARENTS

(Prathana Patel, GLS Law College, Ahmedabad)

INTRODUCTION

We live in a legally advanced society where every human being is being provided certain rights, which he can enjoy purely based on being a Human. However, certain groups have to suffer many hardships to enjoy these rights such as women, children and aged parents. The rights of such people are encroached every day, especially when they get separated either from their husband, father or son. Therefore, when they are unable to maintain themselves and are living in weak economic conditions, they are been provided with a certain amount of money which called "Maintenance".

"Alimony" is the legal term for Maintenance. However, the word maintenance is not described in the criminal procedure code 1973. Provisions of maintenance of wife children and parents are mentioned under chapter nine of the criminal procedure code. In general terms, maintenance means someone paying, certain amount as laid by the court of law to the wife, children and parents because they are not able to leave on their own. In the case of wife and children, it becomes the duty of husband or father to provide maintenance after divorce to wife and the children if living with their mother. The condition attached in the case of children is that the children should be minor. Adult children, who are not abnormal cannot claim maintenance from the father.

This section 125 code of criminal procedure, 1973 talks about the maintenance to the wife, children, and to the aged parents. It is further connected to Article 15(3) and Article 39 of the Indian Constitution. In general, the term maintenance includes the right to food, the right to clothing and the right to shelter.

OBJECTIVE AND PURPOSE OF MAINTENANCE:

The nature of this section isn't punishable instead it aims to prevent homelessness in the form of a procedure that provides speedy remedies to the ones who are suffering from physical or mental pain. The main objective of Chapter IX of the criminal code is not to punish a person who is not maintaining those whom he is bound to maintain. Also, the arrangement made under this has no relation with the personal laws and the same is does not create any distinction

between the religion or castes. This objective was highlighted in the *Shah Bano case* in which the apex court held that 'Section 125 of code of criminal procedure applies to all and has no relation with personal laws'.^[1]

The rights provided to the destitute wife and children are essentially civil rights when they claim their preservation in this chapter. According to the honourable Supreme Court of India Section 125 of the criminal code act is a measure to create social justice and it is specially enacted to protect women and children falling it the arena of Article 15(3) and Article 39 of the Constitution of India.

ENTITLED PERSON FOR MAINTENANCE

The code of criminal procedure under section 125 states the order for maintenance to wives, children and parents. Following persons are eligible to claim and acquire maintenance under section 125.

1. A wife (from her husband)
2. Legitimate or illegitimate minor child (from father)
3. Legitimate or illegitimate child physical or mental abnormality (from father)
4. Parents from their son or daughter.

- ***Eligibility Of Wife:***

There are various conditions provided under which a wife is eligible to claim maintenance such as when she is either divorced by her husband or has obtained a divorce from her husband and has not remarried to another. Also, when she is unable to maintain herself. It is important to note that even a Muslim woman who has taken divorce under the Muslim Women Protection of Rights on Marriage Act can claim maintenance under Section 125 of the criminal procedure code. The act has also laid certain restrictions where a wife cannot claim maintenance such as the wife refuses to live with husband without a reasonable ground or lives separately on mutual consent. The wife living in adultery also falls under the same restrictions.

Chanmuniya v Virendra Singh, in this case, the apex court held that proof of marriage should not be the strict precondition of maintenance under section 125.

The Supreme Court in the case of *Sirajmohmedkhan Janmohamadkhan v Hafizunnisa Yasinkhan* held if the husband of the wife is impotent then the wife can be allowed to have maintenance from her husband.

- ***Eligibility Of Legitimate Or Illegitimate Minor Child:***

According

to Section 3 of the Indian Majority Act, 1875 a "Minor" means a person who has not attained the age of 18. Both minor son and daughter whether legitimate or illegitimate have the right to get maintenance from the father under section 125 of Cr.P.C. For the daughter, the father has to provide maintenance until she is unmarried. In the case when she is married but she is a minor and her husband do not have sufficient means of maintenance of his minor wife then the daughter can ask for maintenance from her father. The court in the case of *Shahbuddin V. State of U.P* held that a minor daughter attaining majority during the pendency of the application for maintenance was held entitled to maintenance up to the date of majority. [2] When a major child (legitimate or illegitimate) is mentally or physically is unfit then he has a right to be maintained by the father on the ground of abnormality.

- **Eligibility Of Parents:**

Both mother and father can claim maintenance. In the case of a mother than an adoptive mother can also claim for maintenance while for a father he cannot be defeated by pleading that he had not fulfilled his parental obligation. Not only this a childless stepmother too can claim from maintenance under section 125(1)(d) this was stated by the Bombay High Court in the case of *Pandurang Bhaurao Dabhade v Baburao Bhaurao Dabhade*. For such kind of maintenance claim, the courts see that the children should be capable of maintaining the parent and the case is raised only when that the children are capable of doing so yet refuse to do.

ELIGIBILITY OF PARTNER UNDER LIVE-IN RELATIONSHIP:

Hon'ble Supreme Court in the case of *D. Veluswamy Vs. Patchaiammal* observed, to consider a relationship like marriage- a couple must have declared themselves akin to spouses in front of the world. Additionally, both man and woman must have attained the respective age of marriage. On contrary, the Supreme Court also held that not all live-in relationships can be considered under the purview of marriage to avail the advantages mentioned under the conditions. For that, the evidence needs to be submitted and the court must be satisfied for the same.

ESSENTIAL CONDITIONS FOR CLAIMING MAINTENANCE:

The first condition herein mentioned here is that any person claiming maintenance must be unable to maintain himself. A woman cannot be refused to get maintenance on the basis that she is capable to earn yet she is not earning.

The claim can be raised after the refusal of providing maintenance.

Insufficient means to provide maintenance can be the valid defence to not provide maintenance to wife/children/parents. If any one of these claims is maintenance then the same magistrate should be satisfied that the person has sufficient means to provide maintenance to them.

Lastly, the quantum of maintenance is different in every case as it depends on the standard of living of the person providing it. This was seen in the case of *Kalyan Dey Chowdhury v. Rita Dey Chowdhury Nee Nandy* where the Supreme Court held, 25% of net salary should be considered enough to give it as a maintenance.

DOCUMENTS REQUIRED TO FILE MAINTENANCE PETITION:

Other than section 125 of CrPC anyone can file maintenance under the domestic violence act. To file the said plea, there is a requirement of certain documents and they as prescribed:

1. Marriage Certificate, to prove the legal solemnization of marriage.
2. Wedding card/wedding ceremony pictures/videos etc will do.
3. Address proof for the jurisdiction of the court. The person can file the plea either at the place where the husband and wife have last lived or where they voluntarily reside.
4. Information about the workplace and annual income of the spouse.

JURISDICTION OF MAGISTRATE:

Section 125 (1)(d) Empowers the magistrate of the first class to pass an order against a person to meet monthly allowance for the wife, children or parents this can be decided solely By the magistrate. In this case, if the proceeding is pending then the magistrate can also pass the order of interim maintenance including the expenses of the proceeding ongoing. As per the rule, the cases of monthly allowances for the maintenance should be disposed of within 60 days from the date of notice of the application of such person. [3]

If the person fails to give maintenance without sufficient cause then the magistrate under section 125(3) of the code can levy fines by issuing warrants. This clause of the section is punishable because on the failure of providing maintenance the person can be imprisoned for 1 month or fine.

PROCEDURE FOR AVAILING MAINTENANCE:

1. The person is to file tradition in the family go claim the maintenance.
2. After scrutinizing the application the family court will issue the notice against the person the application is being filed.
3. The court will ask to go the parties to appear before it for the reconciliation of the case.
4. At this stage, if the reconsideration is successful and the matter stands settled but if it fails then the family court will proceed with the petition on merits.

5. After starting the proceeding the court will as the opposing party to keep its stand. The court will also ask about the annual income statement of the parties to infer the capabilities and the liabilities.
6. The court then asked for the rebuttal from the petitioner against the reply filed by the defender, when this is done the court may decide regarding the application of interim maintenance.
7. Later the court frames the issues end the case is posted for the evidence of the parties.
8. In the next stage, both parties file their relevant document papers also presents witnesses and submit their evidence.
9. On the completion of the final argument, the court passes the order either of dismissal or allowed or partially allowed and direct the other party to pay the amount as per the order of the court.

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1. Alteration In Allowance:

The magistrate can alter the past order passed under section 125 if found necessary. The allowances can be increased/decreased or removed/added. This is done based on changed circumstances. For instance:

- When the order was passed by the magistrate the husband had well settled but currently due to unavoidable circumstances is not earning the same. For this, the court will reduce the allowances by altering the past order.
- After some time the wife gets a job and can maintain herself which she won't have while the order was passed so late the order for removal or cancellation of allowances can be passed by the court.

The magistrate may revoke its order passed by him/her previously under section 125 of the code about the allowances be provided to her if the civil court passes the judgment to live together. The magistrate is empowered to do this under section 127(2).

As per section 127(3), there are three conditions where the order passed can be cancelled such as if the woman gets remarried if she has voluntary leave her rights to maintenance or if a woman has already accepted the maintenance of under personal laws.

1. Order Enforcement:

Enforcement of order of maintenance is dealt with under section 128. Firstly, the copy of the order is given to the person in whose favour the judgment is been passed and in the case of children, the same is given to the guardian. Once the order is passed then any magistrate of India can enforce it.

Before passing the order the magistrate may satisfy two conditions one is the identity of the parties and the other is proof of non-allowances

EX PARTE ORDER CAN BE PASSED: ON WILLFUL NEGLECT OF COURT:

Under section 126 of the code the Magistrate is empowered to proceed to hear and determine the application under section 125 of the code, ex parte if he is satisfied that the person against whom the maintenance order is proposed to be made is willfully avoiding service count of change in circumstance of pay, and consequently paying or receiving maintenance and party is entitled to move an application for alteration of the order of maintenance where there is such a change of circumstances. [4]

However, rise in the cost of living is certainly a change in circumstances and changes must be in circumstances themselves and not on proof already existing circumstances themselves and not on proof of already existing circumstances on record. [5]

CASE LAWS:

Dr Mrs Vijaya Manohar Arbat vs. Kashirao Rajaram Sawai & another: [6] The apex court held that daughter is liable to pay maintenance to parents. A father can ask for maintenance from a married daughter on the condition that the daughter has sufficient means of her own independently of the means of income of her husband.

Kirtikant D. Vadodaria vs. the State of Gujarat and another: [7] The apex court held that a childless stepmother is entitled to get maintenance.

Madan Mohan Singh Vs. Rajanikant: [8] If the parties live together for a long time that it cannot be termed as a 'walk-in and walk-out relation so the court can presume marriage between the parties.

Badshah Vs. Urmila Badshah Godse and Another: [9] the Second wife cannot be denied maintenance under section 125 of the criminal code if the husband had concealed the of his first marriage.

Bakulabai Vs. Gangaram: [10] Hon'ble Supreme Court held that u/s 11 of Hindu Marriage act bigamous child is illegal. However, if the man and woman live together as husband and wife then the child born in such union will be considered as legitimate under section 16(1) of the same act and is entitled to maintenance.

Chaturbhuj Vs. Sita Bai: [11] The apex court held that just because the wife is earning, she can't be denied to claim and get maintenance.

Danial Latifi Vs. Union of India:^[12] The constitutional bench of the Supreme Court held that even after completion of the Iddat period mentioned as per the Muslim law the wife can claim maintenance if she isn't remarried.

Nagendrappa Natikar Vs. Neelam:^[13] **Wife cannot be refused to claim maintenance under Hindu Adoptions And Maintenance Act, 1956 if an order u/s 125 is passed.**

CONCLUSION

For the protection of the right wife/children/aged parents, Chapter IX of the Criminal Procedure Code is essential because the security of a safer world comes always comes from the chief pursuits. This right has undergone a revolutionary transition. On the other hand, the person must have sufficient means to maintain the other. It can be observed that the courts have adopted a liberal way of confirming the applications of maintenance.



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