

# Maintenance proceeding under U/S 125 of Cr. PC

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# Maintenance Under Section 125 Cr. PC

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The objective to enforce the social duty to prevent Vagrancy and Destitution, leading to crimes.

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Maintenance granted irrespective of personal laws.

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It is a tentative remedy, the proceedings being summary.

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An economic umbrella to the weaker, having no sufficient means to maintain themselves.

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The Wives, Children and Parents being the Beneficiaries.

# The Inclusive Definition of Wife

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Wife includes a woman who has not remarried after divorce.

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The object is to frustrate the unscrupulous husbands from making easy divorces under personal law.

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The Shah Bano Case.

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Consequently the retrograde legislation--The Muslim Women (Protection of Rights on Divorce) Act, 1986

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S.C. resolving the controversy in Daniel Latifi V. Uol, 2001 determining the rights of Muslim women.

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# The Wife to be a Legally Married Woman

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The legality of marriage  
decided under personal  
law.

In a case of illegality due  
to bigamy, the victim has  
to suffer and the  
perpetrator goes scot-  
free.

The requirement of legal  
marriage is frustrating the  
very objective.

Plea of Ignorance of first  
marriage refused by court  
stressing the paramount  
nature of legislative  
intention

The need to delete this  
precondition in a country  
where most marriages  
could be held illegal due  
to manifold reasons.

The judicial prejudice in  
favour of marriage.

# Maintenance to the weaker means

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The patriarchal social context leading the legislature and the judiciary to provide for maintenance to:

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The wife by the husband,

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The Child by its father, and

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The father and the mother by the son.

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The silence of law respecting the liability of the daughter.

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Supreme Court making daughter duty-bound to maintain her parents, stressing social obligation.

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(Vijaya Manohar Arbat v/s Kashirao Rajaram Sawai.)

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# The determination of the Quantum

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Inflation and increased standard of living paving way to the removal of ceiling.

Unable to maintain herself relates to the actual and separate income of the wife and not the possible or potential income.

The fixing of the amount shall go beyond the expenses for her primary needs.

The date of effect shall be from the date of application, considering the delay.

Besides personal income, the income from the corpus property of the liable person also shall be taken into account.

# Eligibility to Maintenance

Living in adultery, means not a single act, shall not be used in a way to harass the wife.

Wife must not refuse, without sufficient reasons, to live with her husband.

The wife is not living separately by mutual consent.

Person claiming maintenance must not be capable of maintaining herself. (Abdul Munaf v/s Salima, 1979. Cant, H.C.)

The wife is not living separately by mutual consent.

# Procedure: Maintenance Order

The amount to be modestly consistent with the status of the family.

The removal of ceiling of Rs 500/- per month and the fixing of time-frame through Amendment Act, 2001

Warrant is issued on every breach of the order for levying the amount.

The imprisonment of one month is a last resort when recourse to attachment and sale fail

The imprisonment is to pressurize enforcement and not a mode to satisfy the liability.



# Procedure: Cancellation of Order:

The wife is living in adultery.

Without sufficient reasons she refuses to live with the husband.

They are living separately by mutual consent.

On a decision of a competent civil court.

She remarries after divorce, the order is cancelled w.e.f. the date of remarriage.

On complete compliance with the order.

# Order for maintenance of wives and children (Section 125 of Cr. PC)

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Legal provisions regarding order for maintenance of wives and children under section 125 of the Code of Criminal Procedure, 1973.

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The maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy leading to the commission of crime and starvation by compelling those who can do so to support those who are unable to support themselves and who have a moral claim to support.

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The provisions of maintenance of the Code of Criminal Procedure are applicable to persons belonging to all religions and have no relationship with the personal laws of the parties.

# Persons entitled to claim maintenance:

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**According to Section 125(1) of the Code, the following persons are entitled to claim maintenance under certain circumstances:**

**❖Wife:**

**As per Section 125(l) (a) of the Code, if any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, a Judicial Magistrate First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.**

# Wife:

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Here '**wife**' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

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The wife may be of any age-minor or major.

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'Wife' for the purposes of Section 125 means a legally married woman.

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The legality of the marriage would be governed by the personal laws applicable to the parties.

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If the fact of legally valid marriage is disputed, the applicant will have to prove marriage.

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A marriage solemnized by exchange of garlands was held invalid.

# Wife:



Under Section 125(I)(a) of the Code, maintenance allowance cannot be granted to every wife who is neglected by husband or whose husband refuses to maintain her, but can only be granted to a wife who is unable to maintain herself but not a wife who is maintaining herself with some difficulty.



By the phrase '**unable to maintain herself**', it is not meant that she should be absolutely destitute and should be first on the street, should beg and be in tattered clothes and then only she will be entitled to move an application under Section 125 of the Code.

# Wife:

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If a person is willing to maintain his wife in accordance with his civil obligation, there is neither neglect or refusal.



Where the husband is making payment of some amount to the wife but the amount is not sufficient to meet her basic necessities of life, it is clearly 'neglect' or refusal to maintain the wife within the meaning of Section 125 of the Code.



- **In Savitaben Somabhai Bhatiya v. State of Gujarat**, it was held that Section 125 of the Code has been enacted in the interest of a wife and one who wants to take the benefit under sub-section (1)(a) of Section 125 has to establish that she is the wife of the person concerned.
- The issue can be decided only by a reference to the law applicable to the parties.
- It is only when such a relationship with reference to personal law is established that the application for maintenance can be maintained.
- The issue whether Section 125 is attracted or not, cannot be answered except by a reference to the appropriate law governing the parties.

- Marriage of a woman, even if it is in accordance with the Hindu rites with a man, having a spouse living at the time of the marriage, is a nullity in the eye of law.
- The lady will not get the status of a legally wedded wife and accordingly not entitled to the benefit of Section 125 of the Code of Criminal Procedure.
- **The wife is not entitled to receive an allowance from her husband in three cases, i.e.,:**
  - if she is living in adultery, or
  - if she refuses to live with her husband and without any sufficient cause, or
  - if they are living separately by mutual consent.
- Section 125 of the Code gives effect to the fundamental and natural duty of a man to maintain his wife.
- Section 125 provides a statutory right and cannot be affected by personal law.
- The right conferred upon the wife by the provisions of Section 125 is independent of personal law and to claim protection of Mohammedan Law in derogation of the statutory provisions of the Code is not permissible.
- A wife is entitled to maintenance under Section 125, irrespective of the fact that she is not entitled to maintenance under the personal law.



- In **Chaturbhuji v. Sita Bai**, the respondent had filed an application under Section 125 of Cr.P.C. claiming maintenance from the appellant. The appellant and the respondent had entered into a marital knot about four decades back and for more than two decades they were living separately. In the application it was claimed by the respondent that she was unemployed and unable to maintain herself.

The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support.

- The phrase **unable to maintain herself** 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.

Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. There is no dispute that the appellant has the requisite means. But 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. The appellant has placed material to show that the respondent/wife was earning some income. This is not sufficient to rule out application of Section 125, it has to be established that with the amount she earned the respondent-wife was able to maintain herself.

Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient, she can claim maintenance under Section 125.

- The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. The conclusions of Courts that respondent-wife unable to maintain herself was factual and cannot be interfered with in absence of perversity.

In **Mohd. Ahmed Khan v. Shah Bano Begum**, it is declared that a Muslim husband having sufficient means must provide maintenance to his divorced wife who is unable to maintain herself. Such a wife is entitled to the maintenance even if she refuses to live with the Muslim husband because he has contracted another marriage within the limits of four wives allowed to him by Quran.

- The Bench of the Supreme Court declared that a Muslim divorced woman who cannot maintain herself is entitled to maintenance from her former husband till the time she gets remarried.

They rejected the plea that maintenance is payable for the iddat period only.

Pointing to the ayats of the Quran, the judges declared that the Quran imposes an obligation to provide maintenance to the divorced wife.

- The judges also rejected the contention that deferred Mahr (dower) is a payment on the divorce of a wife and hence such payment under the personal law excludes the payment of any maintenance by the husband to the wife. They stated that Mahr is an amount which the wife is entitled to receive from the husband in consideration of the marriage. They observed that according to Quran, the dower is a consideration and mark of respect for the Muslim woman instead of being a consideration for divorce.

- The learned judges stated that the religion professed by a spouse has no place in the scheme of Section 125 of the Code of Criminal Procedure which is a measure of social justice founded on an individual's obligation to the society to prevent vagrancy and destitution.

The Supreme Court has held that if there is any conflict between personal law and Section 125 of the Code, then it is clear from the language of Section 125 that it overrules the personal law. This judgment created a storm and priest of Islam started agitation. Then the Central Government enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986.

- he divorced Muslim wife's claims are now to be governed by this Act. It is possible for the Muslim spouses to opt to be governed by the provisions of the Code of Criminal Procedure by virtue of a provision in that Act.

According to that Act, a divorced Muslim wife whose relatives are incapable of maintaining her as required under her personal law can straight away apply to the State Wakf Board for maintenance.



- Since the Muslim Women (Protection of Rights on Divorce) Act, 1986 does not contain any provision excluding application of the Family Courts Act a claim for maintenance even by a divorced Muslim woman under Chapter IX (Sections 125 to 128) of the Code of Criminal Procedure shall be to the Family Court.

The Code of Criminal Procedure must override his personal law if it conflicts with it. A proceeding under Sections 24 and 25 of the Hindu Marriage Act, 1955 could not operate as a bar to a proceeding under Section 125 of the Code. In the same way Section 18 or 20 of the Hindu Adoption and Maintenance Act, 1956 does not override the provisions of relief of Section 125 of the Code.

- The Hon'ble Supreme Court in a path breaking judgment **Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Anr**<sup>1</sup> held that "Where partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock"

### ❖ **Child:**

According to Section 125(1)(b) of the Code of Criminal Procedure, if any person having sufficient means neglects or refuses to maintain his legitimate or illegitimate minor child, whether married or not, unable to maintain itself or as per Section 125(1)(c) of the Code, 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, 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 such child, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

- However, the Magistrate may order the father of a minor female child referred to in Section 125(1)(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. Here 'minor' means a person who, under the provisions of the Indian Majority Act, 1875 is deemed not to have attained his majority.

A Muslim minor girl would be entitled to get maintenance from her father even after the enforcement of Muslim Women (Protection of Rights on Divorce) Act, 1986.

The word **Child** is not defined in the Code. It means a male or female person who has not reached full age, i.e., 18 years as prescribed by the Indian Majority Act, 1875 and who is incompetent to enter into any contract or to enforce any claim under the law.

❖ **Father or mother:**

According to Section 125(l)(d) of the Code of Criminal Procedure, if any person having sufficient means neglects or refuses to maintain 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 father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.

The daughter whether married or unmarried would also be liable to maintain the parents as the Indian society casts a duty on the children to maintain the parents and this social obligation equally applies to a daughter.

- Section 125 of the Code does not clearly state whether 'father' or 'mother' include 'adoptive father' or 'adoptive mother' or 'stepfather' or 'stepmother'. According to Section 3(20) of the General Clauses Act, 1897, the word 'father' shall include an 'adoptive father', and though the term 'mother' has not been similarly defined, it has been held that the term 'mother' includes **adoptive mother**.

Though the 'mother' shall not include 'stepmother', a childless stepmother may claim maintenance, under Section 125 of the Code, from her stepson provided she is a widow or her husband, if living, is also incapable of supporting and maintaining her and if has natural born sons and daughters and her husband is alive and capable of earning, she cannot claim maintenance from her stepson.

- If there are two or more children the parents may seek the remedy against anyone or more of them, at place or places where they live.

As per Section 125(1) of the Code, only a husband or a father or a son or a daughter, as the case may be, to pay maintenance to the respective persons, namely, wife, child, father or mother, under certain circumstances. Section 125 does not contemplate the mother to pay maintenance to father or son and daughter, as the case may be.

# Interim maintenance:

- As per second proviso to Section 125(1) of the Code of Criminal Procedure, during the pendency of the proceeding regarding monthly allowance for the maintenance under Section 125(1) of the Code, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Further, an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

# Essential conditions for granting maintenance:

- Sufficient means to maintain:
- According to Section 125(1) of the Code of Criminal Procedure, the person from whom maintenance is claimed must have sufficient means to maintain the person or persons claiming maintenance. Here, the expression 'means' does not signify only visible means such as real property or definite employment.

If a man is healthy and able-bodied, he must be held to possess the means such as real property or definite employment. The words 'sufficient means' should not be confined to the actual pecuniary resources but should have reference to the earning capacity.

Earning capacity or ability to earn requires something more than a fit state of mind or body. It requires opportunity to earn, education or experience and many a time finance, push and pull. If a person is healthy and able-bodied, he must be held to have the means to support his wife, children and parents. Capability of a person to pay must be proved to fix the quantum of maintenance.



# Neglect or refusal to maintain:

- As per Section 125(1) of the Code of Criminal Procedure, the person from whom maintenance is claimed must have neglected or refused to maintain the person or persons entitled to claim maintenance.

Neglect means a default or omission in the absence of a demand whereas 'refuse' means a failure to maintain or a denial of obligation to maintain after demand. A neglect or refusal to maintain may be by words or by conduct. It may be expressed or implied. Neglect or refusal may mean something more than mere failure or omission. Burden of proving neglect is on the claimant.

The expression wilful negligence is a question of law though it has to be decided on given facts. 'Wilful' means designedly, deliberately of set purpose, that is to say, the mind and the overt action moving together.

When there is duty to maintain, mere failure or omission may amount to neglect or refusal. Maintenance means appropriate food, clothing and lodging.

# Person claiming maintenance must be unable to maintain himself or herself:

- As the object of Section 125 of the Code is mainly to prevent vagrancy; the requirement to pay maintenance should be only in respect of persons who are unable to maintain themselves. The inability of the wife to maintain herself is a condition precedent to the maintainability of her application for maintenance.

As per Section 125(1) (a) of the Code, maintenance to a wife can be granted when she is unable to maintain herself. Maintenance means appropriate food, clothing and lodging. By the phrase 'unable to maintain herself', it is not meant that she should be absolutely destitute and should be on the street, should beg and be in tattered clothes.

The maintenance has to be determined in the light of the standard of living of the person concerned. The amount of maintenance should be such that the woman should be in a position to maintain herself and that it should not be much below the status which she was used to at the place of her husband.

The wife need not specifically plead that she is unable to maintain herself. The wife who is hale and healthy and is adequately educated to earn for herself but refuses to earn and claims maintenance from her husband is entitled to claim maintenance but that her refusal to earn under the circumstances would disentitle her to get full amount of maintenance.

# Special requirements where maintenance is claimed by wife:

- **The wife must not be living in adultery:**  
As per Section 125(4) of the Code of Criminal Procedure, no wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under Section 125 if she is living in adultery. The term living in **adultery** has been consistently held to mean an outright adulterous conduct where the wife lives in a quasi-permanent union with the man with whom she is committing adultery.

# Wife must not refuse without sufficient reasons to live with her husband:

- According to' Section 125(4) of the Code of Criminal Procedure, no wife shall be entitled to receive an allowance for the maintenance from her husband, if she refuses to live with her husband. Wife must not refuse to live with her husband without sufficient reason to get maintenance. What could be considered as a sufficient reason for the wife's refusal to live with her husband would depend upon the facts and circumstances in each case.

# The wife must not be living separately by mutual consent:

- **As per Section 125(4) of the Code of Criminal Procedure, no wife shall be entitled to receive an allowance for the maintenance from her husband if they are living separately by mutual consent**

- Civil Court's finding as to desertion by wife is binding on the criminal Court hearing petition for maintenance. But, if the civil Court comes to hold, while directing divorce, that the wife is not entitled to maintenance, it would not deprive her of her right to claim maintenance in a criminal Court though the criminal Court has to consider the decision of the civil Court. In the same way the civil Court's finding on a fact on which interim maintenance is rejected by it is not binding on the criminal Court.

As per explanation to Section 125(3) of the Code, if a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be a just ground for his wife's refusal to live with him.

- A divorced wife cannot be characterised as a wife living separately by mutual consent. A divorced wife is a person who lives separately from her former husband by virtue of a change in status consequent upon the dissolution of the marriage.

A divorce decree by mutual consent to live separately cannot disentitle the wife to claim maintenance. The concept of living separately by mutual consent arises so long as the marriage subsists and the parties agree to live separately by consent. Where the marital relations have been terminated by an agreement, the wife would be entitled to claim maintenance from her ex-husband so long she remains unmarried and is unable to maintain herself. However, in the case of divorce by mutual consent if the wife had relinquished her right to maintenance, she cannot later claim maintenance.

- DNA Test for determination of paternity cannot be directed in a petition under Section 125. In a proceeding under Section 125 of Cr.P.C. the Magistrate was not justified in directing DNA tests of the child to determine paternity.

**On failure to pay maintenance detention in prison could not exceed one month:**

A warrant has to be issued under Section 125 (3) of the Code for payment of maintenance, when an application is made by the person who has been held entitled to maintenance under Section 125 of the Code.

When such a warrant is issued for making payment of maintenance, it has to be levied as the amount due in the manner provided for levying fines and if this warrant is not responded by making the payment, then the Magistrate can order imprisonment and the imprisonment in no case can exceed one month. Therefore, it is immaterial whether there were arrears of twelve months or of any other duration.



Thank You