

RIGHT TO MAINTENANCE UNDER SECTION 125 OF CRIMINAL PROCEDURE CODE, 1973

by

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ABSTRACT

Our country is a secular nation, but the way the term is understood there differs from how it is understood elsewhere in the globe. In India, secularism refers to more than just the absence of religious recognition by the state. Instead, it indicates that everyone is free to adhere to their own personal rules and that the state respects and honours all major world faiths. Distinct statutes have different maintenance-related clauses. But Section 125 of the 1973 Code of Criminal Procedure also contains a secular rule of maintenance. Hindus' personal laws contain their maintenance laws; Muslims' personal laws contain their maintenance laws. In addition, the CrPC's maintenance legislation is also provided; this law is secular in character and can be invoked by anybody, regardless of faith. Compared to other personal laws, the CrPC has a special characteristic in this area. The sole subject of this research endeavour is the person's wife.

Keywords: Secularism, Maintenance, Code of Criminal Procedure, Personal laws.

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Introduction:

According to the law, maintenance refers to the remuneration that one ex-spouse must provide for another after a legal separation or divorce. The purpose of this monetary assistance is to ensure the wife's or divorced wife's ability to sustain herself, her children, the upkeep of the property, and in some circumstances, to allow her to be suitably represented in court. The CrPC is a secular statute that permits any woman to petition the court for maintenance regardless of her affiliation with or practise of a particular religion or creed. The Criminal Procedure Code's Sections 125–128 provide the rules on maintenance, which is of a civil character. The wife, kids, and parents may all seek support under this Section. For those who ignore or refuse to support their dependent spouses, children, or parents, Sections 125 to 128 offer an expedient, useful, and relatively cheap solution.

Interpretation of the word “wife”:

The word “wife” includes a woman who has not remarried after being granted a divorce by or from her spouse. Therefore, in addition to a married wife, the requirement for support under this section also applies to a divorced wife. Despite being secular, this law has a gender-specific element. Only the woman may request maintenance under this statute; the husband is not eligible. It's also important to consider how the word “wife” is to be understood. In accordance with the ruling of the Supreme Court in *Savitaben Somabhai Bhatiya v. State of Gujarat*, the term "wife" used in Section 125(1) only refers to a wife who is legally wed. However, the Supreme Court recently ruled in the cases of *Chanmuniya v. Virendra Kumar* and *D. Velusamy v. D. Patchaiammal* that even though a woman who was in a marriage-like relationship was not considered to be a “legally wedded wife” under Section 125, she could

still make a maintenance claim under the Protection of Women from Domestic Violence Act, 2005.²

Hindu Law and CrPC:

The law of maintenance under both of these statutes are on very different footings. According to the Hindu Marriage Act, 1955, both the husband or wife can claim maintenance; whereas, only the wife can claim maintenance under the CrPC. Moreover, the wife only needs to prove that she does not have a sufficient and independent income in order to claim maintenance under the Hindu Marriage Act, 1955. Whereas, to claim maintenance under the CrPC, she also needs to prove that her husband had either refused or neglected to maintain her. In the case of *Shambhu Nath Pathak v. Kanti Devi*, it was clearly decided that the wife cannot take double benefit of maintenance under both the CrPC, as well as the Hindu Marriage Act, 1955. She can only claim maintenance under one of these.³

Status of second wife:

The question, whether the second wife is entitled to receive maintenance was answered in the case of *Badshah v. Sou. Urmila Badshah Godse & Anr.*, where it was held that even the second wife is entitled to maintenance under the Section 125 of CrPC, under certain circumstances. She should be eligible for maintenance under Section 125 of the CrPC even if a man and woman have been living together for a long period without a legal marriage. If a misrepresentation was made to the second wife that the man is single and competent to enter into a marriage, and if the woman was unaware at the time of the marriage that he has a living spouse, then the second wife is entitled to maintenance.⁴

In the case of *Rajesh Bai v. Shantabai*, a woman's marriage was declared void because of the subsistence of any previous marriage of her husband, but the Court held that she also has the right to claim maintenance, under Hindu Adoption and Maintenance Act, 1956.

The aforementioned judgements make it very obvious that even if she is not the husband's legal wife; the second wife is nonetheless entitled to maintenance under Section 125 of the CrPC. A trial for an offence under Section 494 of the IPC requires a stricter level of proof of

² Sofiabambri, 'Maintenance under section 125 criminal procedure code' (15 June 2021) <<https://www.sbhambriadvocates.com/post/maintenance-under-section-125-criminal-procedure-code>> accessed 6 June 2022

³ *Shambhu Nath Pathak v. Kanti Devi* [2014] Pat 147

⁴ *Badshah v. Sou. Urmila Badshah Godse*[2014] 1 SCC 188

marriage than a process under Section 125 of the CrPC. This Section's goal is to provide social justice, which can only be achieved by decisions like these.

Muslim personal law and CrPC:

Through a number of instances, the Muslim Personal Law's maintenance law has developed. In the case of *Bai Tahira v. Ali Hussain*, it was held that since the dower amount comes under the meaning of the term 'sum payable' as given under Section 127(3)(b) of the CrPC, so a woman who has already received it is not entitled to further maintenance under Section 125 of the CrPC.

In the next case of *Fuzlunbi v. K. Khader Vali*, it was decided that only after judging the sufficiency of the amount of "mehr", will the husband be released from making any further payments.⁵

Eventually, it was determined that "mehr" doesn't fall under Section 127(3)(b), as it's a duty on the husband and is paid as a "mark of respect" for the woman, rather than the quantum to be paid to the woman upon divorce, in light of the precedent-setting case of *Mohammed Ahmed Khan v. Shah Bano Begum*.⁶

After that, the Muslim Women (Protection of Rights on Divorce) Act, 1986 was passed where provided that reasonable and fair provision is to be made and maintenance is to be paid within the iddat period.

The validity of the aforementioned Act was then contested in the case of *Danial Latifi v. Union of India*, where it was determined that it was constitutionally valid and that, even though the maintenance must be paid during the iddat period, it must be sufficient to support her for the rest of her life.⁷

Ultimately, it was considered in the case of *Abdul Latif Mondal v. Anuwara Khatun* that Muslim women might still make a maintenance claim under Section 125 of the CrPC since it is quicker and has the same goal of protecting the lady from poverty.⁸

⁵ *Fuzlunbi v. K. Khader Vali* [1980] 4 SCC 125

⁶ *Mohd. Ahmed Khan v. Shah Bano Begum* [1985] 2 SCC 556

⁷ *Danial Latifi & Anr vs Union Of India* [2001] 7 SCC 740

⁸ *Abdul Latif Mondal v. Anuwara Khatun* [2001] 1 CHN 77

According to the CrPC, Muslim women may likewise request maintenance. In contrast to the Muslim Personal Law, the CrPC grants even divorced women the right to maintenance. Whether Muslim divorced women can assert their entitlement to maintenance under the CrPC, even after obtaining the dower, or not, has been a source of debate and legal uncertainty. The instances mentioned above have definitively resolved this dispute.

Furthermore, according to Section 5 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, the parties may choose to have their disputes decided in accordance with Sections 125 to 128 of the CrPC rather than Muslim Personal Law. Therefore, under the CrPC or the Muslim Women (Protection of Rights on Divorce) Act of 1986, women may seek assistance.

The CrPC, as opposed to the personal law, offers maintenance for both married and divorced spouses, making it a more suitable option in this situation. Additionally, the amount of maintenance is more acceptable under secular law than it is under personal law, which just requires the payment of “mehr”. In addition, maintenance is provided under the CrPC for life rather than only the Iddat term as it is under personal law.

Conclusion:

The maintenance rules provided under the different personal laws as well as the secular law of CrPC differ in a number of ways. Therefore, it would be prudent to draw the conclusion that the CrPC, being a secular, fair, efficient, economical, and quick procedure, is the most advantageous road to be chosen by divorced women to select to get maintenance.