

STUDY ON THE EVOLUTION AND CHALLENGES OF MAINTENANCE LAWS IN INDIA: A COMPREHENSIVE STUDY OF SECTION 125 CRPC AND ITS INTERSECTION WITH PERSONAL LAWS

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Abstract

This study delves into the intricacies and evolution of maintenance laws in India, with a focus on Section 125 of the Criminal Procedure Code (CrPC) and its interplay with personal laws. The paper examines the emergence and legal challenges of live-in relationships in the context of maintenance claims, exploring how Indian courts have adapted to societal changes. It also scrutinizes the gender-specific nature of Section 125 CrPC, debating its constitutional validity and the calls for making it gender-neutral. Furthermore, the study contrasts the secular approach of the CrPC with the provisions under Hindu and Muslim personal laws, highlighting the judicial trends in maintenance cases and the courts' interpretation of these laws in the light of gender equality and social justice. This comprehensive analysis aims to understand whether the personal laws in India align with the gender-neutrality concept and how courts have interpreted these laws to uphold justice and welfare.

Keywords: *Maintenance Laws India < Section 125 CrPC, Personal Laws, Live-In Relationships, Gender Neutrality, Judicial Trends, Constitutional Validity, Hindu Marriage Act, Muslim Personal Law*

1 Introduction

Maintenance refers to the ongoing efforts, encompassing both financial and physical aspects, that are required to preserve something in its original condition. The ongoing process commonly referred to as evolution, which encompasses the development and progress of human civilization, has undeniably resulted in a profoundly challenging predicament for women in various regions around the world. Irrespective of whether it occurs prior to or following the solemnization of marriage, it remains a prevalent issue that a significant proportion of women in India continue to face challenges in accessing essential healthcare services and receiving sufficient nourishment for their overall well-being. This situation becomes significantly more complex and challenging when a woman makes the decision to end her marriage, whether it is a voluntary choice or due to the influence and pressure exerted by her husband. In her quest for financial support to establish a solid foundation for an independent life, an abandoned lady finds herself seeking assistance. This assistance would enable her to navigate the challenges of life on her own terms, while her husband, on the other hand, focuses on tending to his own material needs. One of the primary factors contributing to this issue is the historically entrenched low social standing of women within the intricate fabric of Indian culture. In today's society, it is often expected that women should primarily focus on their domestic responsibilities and rely solely on their husbands for financial support. This situation can often leave them with limited alternatives and few

opportunities to explore their own potential and independence.¹

For those who are unable to pay for themselves, spouses, parents, and children may get maintenance under s. 125 of the Criminal Procedure Code, 1973, a secular law. According to the 41st Law Commission Report, the maintenance provisions of the CrPC, including section 125, provide a quick and affordable solution to the problem of wife starving and vagrancy. Over time, concerns have arisen that this clause violates the right to equality guaranteed by the Constitution, and there have been calls to make it gender-neutral.² Mohd. Ahmed Khan v Shah Bano and Danial Latifi v Union of India are just two examples of the many cases and laws that have cast doubt on the CrPC's breadth of coverage. Other examples include the Muslim Women (Protection of Rights on Divorce) Act, 1986, the Hindu Adoption and Maintenance Act, 1956, and the Parsi Marriage and Divorce Act, 1936. Additionally, the strict implementation of antiquated CrPC laws has been questioned by an increasing number of live-in relationships, interfaith weddings, and adoptions.³

The primary objective of this paper is to comprehensively comprehend and meticulously analyze the most recent judicial trends pertaining to maintenance provisions under the Criminal Procedure Code. This analysis will be conducted by focusing on two crucial parameters. Firstly, it will involve a deep understanding of the concept of live-in relationships within the context of an ever-evolving Indian society. Secondly, it will entail a thorough examination of the intricacies and nuances of Hindu and Muslim personal laws. By delving into these dimensions, this research aims to shed light on the multifaceted aspects of maintenance provisions and their implications in contemporary legal discourse. In this paper, both of these parameters are thoroughly examined and analyzed. The primary objective of this article is to delve into a comprehensive examination of the extent to which the personal laws of India exhibit a satisfactory level of gender neutrality. Additionally, it aims to explore the various interpretations that courts have bestowed upon these laws in order to ascertain whether they have indeed granted equitable treatment to all genders.

2. The Emergence of Live-In Relationships and Section 125, CrPC

On September 25, 2019, the Indian Supreme Court, in a resolute manner, made a strong assertion regarding the utmost importance of maintenance as a welfare provision under the Criminal Procedure Code, 1973. One fine day, a woman accompanied by her adorable young son decided to pay a visit to the esteemed Family Court. Their purpose for being there was to officially file a petition under section 125 of the CrPC, which dealt with the matter of Pratima Devi & Anr. versus Anand Prakash. In response to the ex parte decision of the Family Court, the spouse took legal action by filing a criminal revision case with the esteemed High Court. As a result, the court intervened and put a halt to the monthly payment of Rs. 20,000, which was previously ordered by the Family Court. The underlying reasoning behind this particular course of action was regrettably not adequately documented. According to the highest court in the land, it has been established that a husband or father bears a significant responsibility to ensure the financial well-being and support of his family. In general, it is not customary for a higher court to grant a stay on an order of this nature, unless there are truly

¹ "D. Nagasoila, "Family Courts: Anti Women" 3 Stud Adv (1991) 57"

² "Live Law News Network, "Gender Inequality: Plea in SC challenges the constitutional validity of s. 125 CrPC" (Live Law, 4 September 2019) <<https://www.livelaw.in/top-stories/gender-inequality-plea-in-sc-challenges-the-constitutional-validity-of-s-125-crpc-14774>>"

³ "Arundhati Katju, "Because Jack did not build this house alone: The Right to the Matrimonial Home as a Property Right" 15 Stud Adv (2003) 24"

exceptional circumstances that warrant such action.⁴

In accordance with societal norms and expectations, it is the responsibility of individuals who find themselves in a position where they are incapable of independently meeting their own needs, such as the spouse of a husband and any dependent offspring, whether they are born within the bounds of marriage or not, to fulfill this obligation. In the event that a first-class Magistrate, after careful consideration and evaluation, determines that an individual possesses sufficient financial resources to adequately provide for their family, yet consciously decides not to fulfill this responsibility, it is within the purview of the court to issue an order mandating the payment of a specified sum on a monthly basis. This monetary contribution is intended to ensure the provision of support to one's spouse, children, parents, or grandparents, as stipulated under Section 125 of the Criminal Procedure Code. This particular system is utilized solely in situations where it has been clearly demonstrated that the husband has displayed negligence or a lack of willingness. The term wife refers to a female individual who has undergone a legal separation from her spouse and has refrained from entering into another marital union, as clearly elucidated in the explanatory clause (b) of the aforementioned section. These lines emphasize the requirement for a woman to have entered into the sacred institution of marriage in order to be considered eligible for financial support and assistance.

Under section 125 of the Criminal Procedure Code, 1973, may a woman who is in a live-in relationship be considered a wife for the purpose of claiming maintenance? If that's the case, how long does a live-in relationship need to last before the courts may issue a maintenance order? Would there be a plethora of abuse and lawsuits if live-in partners were granted maintenance? This section of the study report will deal with these inquiries.

2.1 Live-in Relationships and Courts

A live-in relationship, also known as cohabitation, is an arrangement that involves two individuals choosing to reside together in a shared living space without the formalization of a legally recognized marriage. Although it is an unofficial agreement between two individuals who have the desire to enter into the sacred bond of marriage, it is worth noting that certain nations do offer the option of official registration to provide legal recognition and legitimacy to this union.⁵ The judgment on the issue of maintenance for live-in partners has proven to be a highly contentious and debated topic within the courts of India. According to the 2005 decision in *Somabhai Bhatiya v State of Gujarat* by Justices Arijit Pasayat and SH Kapadia, it was established that when a man and a woman make the choice to cohabit and engage in intimate relations without being married, the traditional notion of the 'sacrosanct honour of being a wife' does not extend to the woman involved. Therefore, it is unfortunate to note that in certain situations, the male individual may exploit the woman's vulnerability, thereby gaining an unfair advantage, and subsequently evade any accountability for fulfilling her justifiable expectations in the future.⁶

The supreme court eventually came to the conclusion that the woman's professional, personal, and welfare interests were negatively impacted when the male live-in spouse was allowed to avoid paying maintenance to the female partner by claiming that the marriage had a legal fault. It was thus decided that a presumption of marriage would arise if the connection lasted for a relatively lengthy amount of

⁴ "Ibid, p 3"

⁵ "Prof. Vijendra Kumar, "Live-In Relationship: Impact on Marriage and Family Institutions" (2012) 4 SCC (J)"

⁶ "SomabhaiBhatiya v State of Gujarat (2005) 3 SCC 636"

time, rather than being called a walk-in walk-out arrangement.⁷

Whether a female long-term live-in spouse might seek maintenance under Criminal Procedure Code section 125 is the key issue that arises at this point.

Whether a live-in relationship would amount to a 'relationship in the nature of marriage' falling within the definition of 'domestic relationship' under section 2(f) of the Protection of Women from Domestic Violence Act, 2005? was the question before the Supreme Court in the 2013 case *Indra Sarma v. VKVSarma*. The court defined common law marriage as consisting of three parts: (1) a mutual consent to be married; (2) the maintenance of a marital home; and (3) the manifestation of that marriage to the outside world.⁸

Benefits are extended to cohabitants who are not married under section 2(f) of the Act, since the term relationship in the nature of a marriage applies. It was decided that in order to include all aspects of the interpersonal interaction, a thorough and meticulous examination of the live-in relationship is essential.⁹ The length of time the couple has been together, whether they live together or not, the nature of their financial and domestic arrangements, the frequency and intensity of sexual encounters, and the parties' intentions and actions are some of the factors that the courts consider while deciding whether to give marital remedies.

More and more, legal precedents are mirroring societal reality. Legislators and judges, however, seem to operate with the implicit premise that women will always need assistance. The female live-in partner is entitled to support upon separation, even in the lack of any laws stating otherwise. What follows is an analysis of the impact of expanding maintenance eligibility to live-in couples under Section 125.

2.2 What does section 125 of the CrPC reflect on maintenance in live-in relationships?

The relevant case law is *Chanmuniya v. Virendra Kumar Singh Kushwaha*¹⁰. Appellant and first respondent were cohabitating as husband and wife and fulfilling all marital duties according to the circumstances of the case. The first respondent started abusing his wife after just a few years of marriage and never fulfilled his responsibilities as a husband. Consequently, the appellant sought support via the courts under section 125 of the Criminal Procedure Code.¹¹ The court ruled that until shown otherwise, a marriage would be considered legal if a man and a woman are shown to have lived together as husband and wife.

It is essential to examine the background and purpose of a law before attempting to apply it to a real-world situation. The purpose of Criminal Procedure Code section 488, which was formerly known as section 125, was examined in the case of *Nanak Chand v. Chandra Kishore Aggarwal*¹². It was determined by the court that maintenance, as provided for in the Code, is a remedy that may be granted to any person regardless of their religious beliefs. It has nothing to do with the kind of remedy that the parties' personal law provides.¹³

provision 125 of the Criminal Procedure Code is essentially a revival of Section 488, the Supreme Court decided in *Capt. Ramesh Chander Kaushal v. Veena Kaushal*, with the exception that the former

⁷ “*Madan Mohan Singh v Rajni Kant* (2010) 9 SCC 209”

⁸ „*Indra Sarma v VKV Sarma* 15 (2013) SCC 755“

⁹ “*ibid*, p 40”

¹⁰ Kumar (n 7) J-26”

¹¹ “*Chanmuniya v Virendra Kumar Singh Kushwaha* (2011) 1 SCC 141

¹² “*Nanak Chand v Chandra Kishore Aggarwal* (1969) 3 SCC 802”

¹³ „*Capt. Ramesh Chander Kaushal v Veena Kaushal* (1978) 4 SCC 70“

provision did not consider parents to be eligible for maintenance.¹⁹ According to the judges' interpretation, the provision represents a positive development towards social fairness. If the husband rejects an effort to get support on the basis that there is no formal ceremonial marriage, the provision's fundamental goal of preventing poverty and vagrancy would go unmet.

So, regardless of the person's personal law, maintenance under CrPC would be given provided provisions under section 125 are met. Although courts are understandably wary of allowing a live-in partner maintenance because of the potential for abuse of the provision, this need not be the case. It is the prosecution's responsibility to establish guilt beyond a reasonable doubt in criminal proceedings. The court will give the maintenance claim significant attention only if the female live-in partner can establish that there has been neglect, refusal, harm, or similar circumstances.

3. Challenge to section 125: Is the CrPC at loggerheads with the Constitution?

A petition questioning the constitutionality of section 125 of the CrPC, based on gender discrimination, was presented before the Supreme Court on September 4, 2019. It is essential to examine the language of section 125(1) before the appellants' arguments are considered:

- 1) If someone with enough money doesn't want to or doesn't bother to keep up with—
- 2) his wife, who is financially strapped or
- 3) his minor kid, whether born into legal or unnatural parenthood, who is married or not, and who is unable of supporting itself, or
- 4) any of his children, whether born of his marriage or not, who have reached legal adulthood, unless that kid is unable to care for themselves due to a mental or physical disability, or
- 5) his parents, who are burdened with financial obligations,
- 6) In the event that evidence of neglect or refusal is presented, a first-class magistrate has the authority to impose a monthly stipend on the offender in order to support his or her spouse, children, parents, or both, at a rate that the magistrate deems appropriate, and to disburse the same to whomever the magistrate may instruct at any given moment.

Even a cursory reading of the clause reveals that the man in the relationship would be the one to pay maintenance each month. Even though he was just a high school dropout with a certificate in aviation repair and was out of work, the husband in the case that made it to the supreme court was nonetheless required to pay maintenance to his estranged wife. The petitioners in this case mainly argued two things: first, that the provision is clearly discriminatory based on gender since it goes against the general equality principle outlined in Articles 14 and 15 of the Constitution, and second, that there is no logical way to classify it.¹⁴ Furthermore, it is based on the assumption that men can work if they are physically and mentally fit, but women can only work if they are financially secure outside of marriage.

The petition thus requested that the Supreme Court either make a modification to the CrPC that would make it gender-neutral or null and void since it violates the Constitution.¹⁵ The following issue so arises: is a wife's entitlement to maintenance absolute?

3.1 Courts on the Challenges to the Constitutionality of section 125, CrPC

¹⁴ “Live Law News Network, ‘Gender Inequality: Plea in SC Challenges the Constitutional Validity of Section 125 CRPC’ (LiveLaw, 4 September 2019) <<https://www.livelaw.in/top-stories/gender-inequality-plea-in-sc-challenges-the-constitutional-validity-of-s-125-crpc-147747>>”

¹⁵ “The Hindu, “Plea to Strike Down Section 125 on Maintenance” (5 September 2019)<<https://www.thehindu.com/news/national/plea-to-strike-down-sec-125-on-maintenance/article29336552.ece>>”

Section 125's constitutionality under Articles 14 and 15 has not been specifically challenged until the September 2019 petition reached the Supreme Court. The previous case of *Inderjit Kaur v. Union of India and Others* dealt with the issue of whether or not a maintenance payment of up to 500/-Rs. was unreasonable.¹⁶ In response to this argument, the CrPC was amended in 2001 to remove the maximum maintenance amount from Chapter IX of the Code.

According to Article 14 of India's Constitution, no individual should be denied equality before the law or the equal protection of the laws within India's territory. Protecting the inherent dignity and worth of every person by eliminating discrimination based on race, religion, gender, sexual orientation, or place of birth. Reasonable categorization limits the scope of this basic right, which is not absolute.¹⁷ One way a judge may determine whether the legislation was arbitrary is by using the reasonable categorization test based on intelligible differentia, as established in the case of *Ajay Hasia v. Khalid Mujib*.¹⁸

Section 125 CrPC is obviously a secular provision designed to salvage all divorced damsels in penurious distress, regardless of religion, from the throes of desperate destitution, which may drive them to prostitution and other survival alternatives, Justice Krishna Iyer described it.¹⁹ When this Code was passed, Indian society was going through a period when women were repressed and denied their fundamental rights within the marital home, when they were often left to fend for themselves, and when the courts were slow to bring those responsible to justice. A clause was therefore included to make husbands criminals if they failed to pay maintenance to their divorced wives.

When dealing with unfortunate spouses and children in poverty, the court must use purposive interpretation, as was clearly shown in the case of *Badshah v. Urmila Badshah Godse*.²⁰ It was hoped that the Indian society's reality would be taken into account while implementing Section 125 of the CrPC. While it's encouraging to see that women are gaining economic and personal independence, the issue of whether this trend is skewed remains an important one. Opponents of Section 125 argue that a gender-neutral legislation is urgently needed in the current climate, while proponents of the status quo argue that it is premature to address this issue, considering the impact of personal laws in the nation. The part that follows will focus on these points. The next step for the author is to examine how section 125 of the Code relates to India's personal laws.

4. Is section 125 of the CrPC secular enough?

It is clear that the Criminal Procedure Code has attempted to function as a secular statute that allows for the remedy of maintenance to be pursued. But you also have to think about how far personal laws go in a nation like India. This section examines the rules about maintenance in personal law as they pertain to Hinduism and Islam.

4.1 Maintenance under the Hindu Personal Law

Sections 24 and 25 of the Hindu Marriage Act address maintenance pendente lite and permanent alimony, respectively. In deciding whether to issue a maintenance decision under section 24, the court considers the monthly salaries of both the petitioner and the respondent. Funds allocated for court

¹⁶ “*Inderjit Kaur v Union of India* (1990) 1 SCC 344”

¹⁷ “*Udai Raj Rai, “Right to Equality – Reasonable Classification Rule versus Rule Against Arbitrariness: A Note”* (2018) 8 SCC (J)”

¹⁸ “*Ajay Hasia v Khalid Mujib* (1981) 1 SCC 722”

¹⁹ “*Justice Krishna Iyer, “An Open Letter to the Prime Minister”* (1986) 2 SCC J-1”

²⁰ “*Badshah v Urmila Badshah Godse* (2014) 1 SCC 188”

proceedings must be distributed to the party in need, and this clause does not discriminate on the basis of gender. When deciding on a maintenance judgment under Section 25, the court considers the income and assets of both the applicant and the respondent, including in cases of permanent alimony.

Justices Sanjay Kishan Kaul and KM Joseph, who sit as a two-judge bench, recently heard a special leave petition challenging a ruling from the Allahabad High Court in the first week of October. The husband in the case of *Subrat Kumar Sen v. State of UP* argued that his wife was remaining away from the marital house without a good reason because she defied the order for restitution of conjugal rights as given under section 9 of the Hindu Marriage Act. Accordingly, the High Court rejected the wife's request for support under Criminal Procedure Code section 125(4).²¹ According to subsection 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.

The question of whether there is a good cause to exclude the husband from paying maintenance to the wife is one that the court may rule upon at its discretion.²² The ruling in the special leave petition is still on appeal, but the larger legal issue is whether or not the grounds for a husband's refusal to pay maintenance have the effect of reversing the gender equality guaranteed under the Hindu Marriage Act. The reasons for this include infidelity, living apart with mutual agreement, and a reluctance to live with spouse for no good reason.²³ The husband has the right to refuse support payments to the wife under section 25(3) of the HMA if she fails to maintain her chastity. Secular and personal laws both use the wife's sexual purity as an excuse to refuse upkeep.²⁴

Justices AM Shaffique and N. Anil Kumar, sitting as a two-judge bench on September 26, 2019, adopted a welfare-oriented stance by granting maintenance to a wife even though the divorce was granted due to infidelity.²⁵ The case's central argument was that, even if the husband had previously shown that there was one episode of adultery, the wife should be seen to be living in adultery if the pair had been divorced on the same grounds. The court differentiated between the grounds for denying support under section 125(4) of the Criminal Procedure Code and grounds for granting a divorce under section 13(1)(i) of the Hindu Marriage Act:

Under the Hindu Marriage Act, divorce can be granted u/s 13(1)(i) if after solemnization of the marriage, one spouse has voluntary sexual intercourse with any person other than his/her spouse. In order to obtain a divorce u/s 13(1)(i), even a single instance of voluntary sexual intercourse with another person is enough, whereas u/s 125(4), to deny the maintenance, the words used are living in adultery.

The explicit goal of enacting Section 125 was to safeguard children and women from homelessness and vagrancy. The provision's genuine benefit will be denied to women in need if the grounds for denial of maintenance are misconstrued and judges' preconceived conceptions are further applied.

²¹ “*Subrat Kumar Sen v State of Uttar Pradesh and Anr.*, SLA (Crl.) No.(s) 8994/2019”

²² “Ashok Kini, “SC to examine if a husband who obtained decree of restitution of conjugal rights liable to maintain wife” (Live Law, 5 October 2019) <<https://www.livelaw.in/top-stories/is-husband-who-obtained-decree-of-restitution-liable-to-maintain-wife-148758>> accessed 3 November, 2019”

²³ “The Criminal Procedure Code, 1973, s. 125(4)”

²⁴ “Flavia Agnes, “Conjugalality, Property, Morality and Maintenance”, Economic and Political Weekly, Vol. 44 No. 44”

²⁵ “Mat. Appeal 325/2011; LiveLaw, “Wife entitled to maintenance after divorce if she is not ‘living in adultery’: Kerala HC” (26 September 2019) <<https://www.livelaw.in/news-updates/wife-entitled-maintenance-after-divorce-not-living-in-adultery-148474>>”

woman who is divorced due to desertion may also demand support, as the Supreme Court stated in the case of *Dr. Swapan Kumar Banerjee v. State of WB*. This is for identical reasons.²⁶ Misapplication of section 125(4) would undermine the principle of gender-neutrality, even if the Hindu Marriage Act does not inherently establish a split over the extension of maintenance.

To be sure, the Hindu Adoptions and Maintenance Act of 1956 (section 18) does establish gender differences. The Hindu husband is not eligible for maintenance under this clause; only the Hindu wife is. Its methodology and goals are quite similar to those of section 125 of the CrPC. In their decision to defend the wife's entitlement to maintenance, the judiciary has used the adage *ut res magisquamperat*, which states that where two or more competing interpretations of a legislation exist, the court must choose the one that prevents the harm that the statute aims to mitigate. It was possible for a second wife to get support after a divorce, even if she had no knowledge that her husband had an extramarital affair.²⁷ So, in matters of personal law, a great deal is left to the discretion of the courts. This has led to differing opinions that are centered on the well-being of individuals.

4.2 Maintenance under the Muslim Personal Law

Due to the lack of a codified body of Muslim personal law governing maintenance, analyses of the views of different Islamic jurists on the subject must be based on decisions. Paragraph 19 of the case *Mohammad Ahmad Khan v Begum Shah Bano* delves into the question of support for divorced women by examining the Quranic viewpoint on the matter:

For divorced women also there shall be provision according to what is fair. This is an obligation binding on the righteous. Thus, does Allah make His commandments clear to you that you may understand.

According to Muslim personal law as outlined in the Quran, a Muslim husband is obligated to provide financial support to his divorced wife. After the first three months of the *iddat* period, nevertheless, this duty is null and void. If the wife is currently menstruating, this time begins three menstrual cycles after the divorce decree, or three lunar months after the decree. If the pregnant wife of the divorcing husband is subject to maintenance, it will continue until the baby is born.²⁸ Looking at Muslim personal law makes one wonder if divorced spouses are required to seek support once the *iddat* period ends. Can an action be filed under section 125 of the CrPC to seek such maintenance?

The time has come to investigate subsection (b) of section 127(3) of the Code. If a woman gets a divorce and gets all the money she may be entitled to under the personal or customary law that applies to her and her husband, the maintenance order she had issued under section 125 of the Code can be revoked, according to this clause. The Supreme Court made it clear in the case of *Bai Tahira v. Ali Hussain* that a husband cannot completely absolve himself of maintenance payments unless there is proof of payment of a sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance. This provision may appear to absolve the husband of this responsibility.²⁹ Customary or personal law maintenance amounts must be comparable to the monthly maintenance ordered under section 125 of the CrPC.³⁰ Therefore, the court has made an effort to guarantee that the true purpose of maintenance is fulfilled.

²⁶ “*Dr. Swapan Kumar Banerjee v The State of West Bengal &Anr.*, Criminal Appeal No(s). 232-233 of 2015.”

²⁷ “*Suresh Khullar v Vijay Kumar Khullar* (2005) 12 SCC 166”

²⁸ “*Dr. Taslima Monsoor*, “Maintenance to Muslim Wives: The Legal Connotations” (1998) 9 DULJ 63”

²⁹ “*Bai Tahira A v Ali Hussain Fissali Chothia* 1979 SCR (2) 75”

³⁰ “*Fuzlunbi v. K. Khader Vali* (1980) 4 SCC 125.”

According to the author's previous arguments, Hindu personal law does not differentiate between the sexes when deciding who gets maintenance; the only need is that both partners' income and property be considered.³¹ But discrimination against one gender is an issue in Islamic law due to the lack of codified rule. The seminal case of Mohammad Ahmad Khan v Begum Shah Bano was an early effort to decipher this intricacy.

The lawsuit highlights the potential conflicts that might arise when religious convictions and constitutional ideas of gender equality are at odds with one another. Mohammed Ahmed Khan, the husband of a Muslim lady who was 62 years old when she filed for support after their divorce, had married another woman. Whether the maintenance amount may be supplied beyond the iddat period, as authorized under section 125 of the Code, was the question before the court. In its landmark verdict, the Supreme Court upheld Shah Bano's right to maintenance and focused on the need of addressing the gender equality problem.³²

Parliament passed the Muslim Women (Protection of Rights in Divorce) Act in 1986 in response to orthodox Muslim and societal pressure. With the passage of this law, the Shah Banocase decision of the Supreme Court was overturned. A divorced woman would only be obligated to pay support during the iddat period, according to the new provision. People all around the country were outraged by the recently passed laws, which they saw as a threat to gender equality. In the case of Danial Latifi & Anr v Union of India, the court once again adopted a hard line. A challenge to the Act's constitutionality was the subject of the litigation. Instead of considering community limitations, the Supreme Court adopted a quintessentially universalist stance and made its decision based on welfare. Making a fair and appropriate arrangement for a Muslim woman who has been divorced coexisted, the Court said, with the responsibility to pay support throughout the iddat period. It is important to do this for her future welfare. So, the Act was affirmed by the Supreme Court, which also introduced a remedy that was more effective than what was given by section 125 of the Criminal Procedure Code.³³

In its rulings on Hindu and Muslim personal laws, the court has shown that feminism and multicultural or secular policies are at odds with one another. For feminist reasons, judges have been slow to apply several aspects of personal law. This is because of the pressures from society as a whole as well as their individual biases. Section 125 is not a community-centric or religion-centric law, and perhaps the most secular enactment ever made in the country, the Allahabad High Court said in the Jubair Ahmed v Ishrat Bano case, which was decided on October 29, 2019.³⁴ To rephrase, equality jurisprudence is now an essential component of social justice adjudication.

5. Conclusion

According to the author, courts have been more willing to award maintenance to a female live-in spouse who has been neglected or refused it due to shifting societal norms. The secular law, such as the Criminal Procedure Code of 1973, has granted such maintenance, rather than the parties' personal rules. This protects rural and urban women alike who were sometimes derided in court discussions as mistresses or keeps due to a formality in their marriage. Since section 125 is not gender-neutral, the author acknowledges that it would also apply to the female partner in live-in relationships. But

³¹ "The Hindu Marriage Act, 1954, ss. 24-25."

³² "Mohd. Ahmed Khan v Shah Bano Begum (1985) 2 SCC 556"

³³ "Danial Latifi & Anr. v Union of India (2001) 7 SCC 740"

³⁴ "Jubair Ahmed v Ishrat Bano, Cr. Revision No. – 2509 of 2014; LiveLaw, "Section 125 CrPC is a tool to realize gender justice; one of the most secular law ever made: Allahabad HC" (LiveLaw, 29 October 2019"

considering the social systems and institutions that Indian culture has developed and maintained, it is only reasonable that deprived male partners be allowed maintenance under their personal law. This would make it possible to extend a remedy that is not biased against either gender and also lessen the likelihood of section 125 being abused as a remedy for exploitation.

The author has maintained throughout this article that protecting the interests of the abusive spouse takes precedence over any conflicting personal legislation or the Criminal Procedure Code. The fact that maintenance may only go to the wife is acknowledged, but it does not mean that the Code is invalid or violates Article 14. In the same vein, it is essential to remember that the goal of the provision is to prevent the creation of a gender gap in the Code from undermining it, and that this goal has put a premium on judicial discretion and the use of judicial intellect.

It is possible to provide maintenance to either spouse under the Hindu Marriage Act, and solely the female spouse under the Hindu Adoptions and Maintenance Act, both of which are established in Hindu personal law. Nevertheless, Islamic law remains uncodified. In order to interpret a welfare clause in favor of the wife, the supreme court has endeavored to grasp the view of the Quran, sunnahs, and hadiths. By elucidating the distinct mission of each, the contention between the remedies in the Code and the personal law has been settled. The Code is now an act of secular law. Although it focuses on gender, it does not prioritize communities. Changing the legislation to be non-sexist would be fascinating, but it doesn't seem likely in this day and age.

References

- Arundhati Katju, Because Jack did not build this house alone: The Right to the Matrimonial Home as a Property Right 15 Stud Adv (2003) 24
- D. Nagasoila, Family Courts: Anti Women 3 Stud Adv (1991) 57
- Dr. Taslima Monsoor, Maintenance to Muslim Wives: The Legal Connotations (1998) 9 DULJ 63
- Flavia Agnes, Conjugal Property, Morality and Maintenance, Economic and Political Weekly, Vol. 44 No. 44
- Justice Krishna Iyer, An Open Letter to the Prime Minister (1986) 2 SCC J-1
- Prof. Vijendra Kumar, Live-In Relationship: Impact on Marriage and Family Institutions (2012) 4 SCC (J)
- Udai Raj Rai, Right to Equality – Reasonable Classification Rule versus Rule Against Arbitrariness: A Note (2018) 8 SCC (J)

Statutes

- Muslim Women (Protection of Rights in Divorce) Act, 1986
- The Constitution of India, 1950
- The Criminal Procedure Code, 1973
- The Hindu Adoptions and Maintenance Act, 1956
- The Hindu Marriage Act, 1954

Online Sources

- Ashok Kini, SC to examine if a husband who obtained decree of restitution of conjugal rights liable to maintain wife (Live Law, 5 October 2019) <<https://www.livelaw.in/top-stories/is-husband-who-obtained-decree-of-restitution-liable-to-maintain-wife-148758>> accessed 3 November, 2019

- Live Law News Network, 'Gender Inequality: Plea in SC Challenges the Constitutional Validity of Section 125 CrPC' (LiveLaw, 4 September 2019)
- <<https://www.livelaw.in/top-stories/gender-inequality-plea-in-sc-challenges-the-constitutional-validity-of-s-125-crpc-147747>>
- Live Law News Network, Gender Inequality: Plea in SC challenges the constitutional validity of s. 125 CrPC (Live Law, 4 September 2019) <<https://www.livelaw.in/top-stories/gender-inequality-plea-in-sc-challenges-the-constitutional-validity-of-s-125-crpc-147747>>
- LiveLaw, Section 125 CrPC is a tool to realize gender justice; one of the most secular law ever made: Allahabad HC (LiveLaw, 29 October 2019)
- <<https://www.livelaw.in/news-updates/section-125-crpc-gender-justice-tool-secular-enactment-149307>> accessed 3 November, 2019.
- LiveLaw, Wife entitled to maintenance after divorce if she is not 'living in adultery': Kerala HC (26 September 2019) <<https://www.livelaw.in/news-updates/wife-entitled-maintenance-after-divorce-not-living-in-adultery-148474>>
- The Hindu, Plea to Strike Down Section 125 on Maintenance (5 September 2019) <<https://www.thehindu.com/news/national/plea-to-strike-down-sec-125-on-maintenance/article29336552.ece>>