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LEGAL FRAMEWORK FOR MAINTENANCE IN INDIA

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Abstract

Spousal maintenance is clearly, not an outdated concept. The justifications for it are borne not out of old-fashioned views of female inequality, but rather an honest appraisal of the economic and social status of men and women in modern society. However on the other hand, Spousal maintenance is an out-dated concept that continues to sustain vestiges of a long dead relationship contrary to the 'clean break' principle and the financial independence of the parties. It also deters the parties from entering into new relationships by the creation of financial obstacles and disincentives. This paper deals with the concept of Maintenance under the various laws. It aims at providing support and care to wife. There is no fixed amount of maintenance, it is solely upon the discretion of the Court. Maintenance is part and parcel of basic human right and not merely a legal right. Section 125 of Cr.P.C. intends to protect indirectly the basic human right of individual. The provision also reflects the constitutional obligation and insures a standard of loving to its citizens. These also uphold the spirit of Article 21 of the Constitution.

Keywords: Maintenance, Amount of Maintenance, right, obligation and lacunae.

INTRODUCTION

The Constitution of India guarantees to "all Indian women equality¹, no discrimination by the State², equality of opportunity³, equal pay for equal work⁴. In addition, it allows special provisions to be made by the State in favour of women and children⁵, renounces practices

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¹ Article 14 of the Constitution of India.

² Article 15 (1) of the Constitution of India.

³ Article 16 of the Constitution of India.

⁴ Article 39 (d) of the Constitution of India.

⁵ Article 15 (3) of the Constitution of India.

derogatory to the dignity of women⁶, and also allows for provisions to be made by the State for securing just and humane conditions of work and for maternity relief”.⁷

The term “alimony” and “maintenance” have come to our matrimonial law from English law. According to Blackstone, alimony is a term which signifies maintenance. In case of separation the wife might sue for alimony against her husband if he neglects or refused to make her an allowance suitable to their station in life.⁸ The case of husband’s refusal to maintain his wife was considered as injury to her, the court would redress it by assigning her a competent maintenance and compelling the husband by ecclesiastical censures to pay it.⁹

The “traditional view of spousal maintenance within the common law was based on an inherently patriarchal view of male/female relationships. Women were dependent on men and generally seen as being incapable of self-sufficiency. Divorce did not sever the dependency of a wife on her husband, and it was therefore his duty to provide financial support for her indefinitely.¹⁰

Spousal maintenance is assumed to move from husband to wife, even though the Family Law Act provides for equal rights to spousal maintenance. Current statistics show that instances of maintenance passing from wife to husband are negligible”.¹¹

MAINTENANCE AS UNDER THE CRIMINAL PROCEDURE CODE

Section 125 of the Criminal Procedure Code, 1973 makes provision for maintenance of wives, children and parents. The mandate of this section shows that it is natural and fundamental duty of every person to maintain his wife and children so long as they are not able to maintain themselves. It is considered to be the holy duty of a person to maintain his parents too. The whole concept of granting maintenance includes basically that the opponent/husband or son or father, willfully refused or neglected the claimant/wife or father and mother or children, unable to maintain herself or himself, and the former has sufficient means to pay the maintenance. “Apart from this the court also needs to consider the capacity and ability of the other party to

⁶ Article 51A (e) of the Constitution of India.

⁷ Article 42 of the Constitution of India.

⁸ Blackstone’s Commentaries, 94 (Vol. III).

⁹ Diwan Paras, LAW OF MARRIAGE AND DIVORCE, 692, (4th ed., 2002).

¹⁰ Unless she remarried, or was found guilty of matrimonial fault.

¹¹ Juliet Behrens and Bruce Smyth, ‘SPOUSAL SUPPORT IN AUSTRALIA: A STUDY OF INCIDENCE AND ATTITUDES’ (Working Paper 16, AIFS, 1999) 10.

maintain her or him. The overall assessment of the fact, surrounding circumstances and totality of the matter is the foundation for such claim of maintenance.¹²

According to the Supreme Court Section 125 of the Code of Criminal Procedure 1973 is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15 (3) of reinforced by Article 39, There is no doubt that Section 125 to 128 of the Code calling for interpretation by the courts are not specified but vibrant words with social functions to fulfill.¹³ It is a secular safe guard irrespective of the personal laws of the parties.¹⁴ Having a social purpose this section in its interpretation must receive a compassionate expanse of the sense that the words permits. There is no doubt that section of statutes calling for construction by Courts are not petrified print but vibrant words with social functions to fulfill". The brooding presence if the Constitutional empathy for the weaker sections, like women and children must inform interpretation if it has to have social relevance.¹⁵

This section compels a person to support his wife and children of parents unable to support themselves. The provisions relating to obligation to maintain are not penal in nature, but it is intended for the enforcement of a social duty, a default of which may lead to destitution and vagrancy, it serves a social purpose. Therefore, it will not be fair to exclude a well to do married daughter, who has an independent source of income, from carrying out this social obligation. That will be against all the canons of justice, equality and good conscience.¹⁶

Scope of the Section: "Emphasis has been laid in all cases on the inability to maintain because the primary object of the section is to prevent starvation and vagrancy. A major married daughter has been wholly excluded from the operation of this section as the responsibility of maintaining her should be on her husband. According to the M.P. High Court the word may shows that the husband is not bound to maintain the wife in all circumstances. The wife has no absolute right to maintenance.¹⁷ The proceedings under this section are not punitive. The object is not to punish a

¹² Dayandeo Dhakane v. State of Maharashtra, 2006 Cr.L.J. 4581 (Bom).

¹³ Ramesh Chandra Kaushal v. Mrs. Veena Kaushal, 1979, Cr. L.J. 3 (SC).

¹⁴ Fuzlunbi v. K. Kader Vali, AIR 1980 SC 1730; N.C. K. Agarwal, AIR 1970 SC 446; Savitaben Samabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636.

¹⁵ Madhavan v. Munir, (1955) Mad. 457.

¹⁶ Vijaya v. Kashirao, 1986 Cr. L.J. 1399 (Bom).

¹⁷ Manubhai v. Sukhdeo, 1990 Cr. L.J. 646.

person for neglect to maintain those whom he is bound to maintain but to provide a speedy remedy”.

NATURE OF RIGHT

The rights of a destitute wife or a minor claiming maintenance in this chapter are essentially a civil right. The remedies provided in the said chapter are in the nature of civil rights. The proceedings under this section are essentially of civil nature.¹⁸ Also the right to receive maintenance is a purely personal right created by an order of a criminal Court; there is no charge created on property by the order for maintenance, and the maintenance cannot, therefore, be held to be alienable property.¹⁹

PERSONS ENTITLED TO CLAIM MAINTENANCE UNDER SECTION 125

According to Section 125 (1) the following persons are entitled to claim maintenance:

1. Wife: “The wife who is unable to maintain herself, is entitled to claim maintenance. She may be of any age- minor or major. The term wife includes a woman who has been divorced by, or has obtained divorce from, her husband is still to be considered as wife so long as she remains unmarried.²⁰ Wife means only a legally wedded and legitimate wife²¹ and therefore, a marriage proved illegal, cannot give a wife any right to get maintenance.²² This section only applies to an abandoned wife and not an abandoned mistress.²³ This section does not include a wife whose marriage is void, being in the life time of the first wife of the husband.²⁴ But where the first marriage has been dissolved, on proof of second marriage, wife is entitled to maintenance.²⁵ It includes a woman who obtains divorce by mutual consent.²⁶

The object of the provision being to prevent vagrancy and destitution, it has to be found out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and the

¹⁸ Zahid Ali v. Faahmida Begum, 1988 (3) Crimes 373 (Bom).

¹⁹ Giribala Debee v. Nirmalabal Debee, (1934) 62 Cal 404.

²⁰ Explanation (1) to Section 125 of the Code of Criminal Procedure, 1973.

²¹ Savithramma (Smt.) v. Ramanarasimhaiah, (1963) 1 Cr.L.J. 131; Bansidhar v. Chhabi, AIR 1967 Pat 277.

²² Ishwar Singh v. Smt. Kukam Kaur, AIR 1965 All 464; Naurang Singh v. Sapla Devi, AIR 1968 All 412

²³ Madhvan v. Munir, (1955) Mad. 457.

²⁴ Madhav Pradhan v. Ketaki Pradhan, 1995 Cr.L.J. 1785 (Ori).

²⁵ Mangla v. Prahlad, 1995 Cr.L.J. 2643 (Bom-DB).

²⁶ Kongini Balan v. M. Visalakshi, 1986 Cr.L.J. 697 (Ker).

requirements of the wife for a moderate living, the earnings of the husband and his capacity to earn and commutability are relevant factors while determining the quantum of maintenance.²⁷ A woman has two distinct rights for maintenance under Section 125 of the Code. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125

(4) of the Cr.P.C. In other capacity, namely, as a divorced woman but not remarried, she is entitled to claim maintenance from the person of whom she was once the wife.²⁸

Child: (a) A minor child, if *unable to maintain itself*, is entitled to claim maintenance.²⁹ It is immaterial whether such child is legitimate or illegitimate, or whether married or unmarried.³⁰ The child may be male or female. A minor married girl may be entitled to claim maintenance from her husband or her father or may be from both provided the other necessary conditions are satisfied.

(b) Even after attaining majority a legitimate or illegitimate child is entitled to claim maintenance if by any reason physical or mental abnormality or injury it is unable to maintain itself. However, a married daughter is not entitled to maintenance under Section 125 of the Code if she has attained majority. In such cases the responsibility of maintaining her is that of the husband and not of the father. Hence the old conflict of law as to whether child in the section means only a minor child or is irrespective of age has now been settled that to find *unable to maintain itself* regard must be had to particular circumstances obtaining in each family and its status.³¹

Father and Mother: A father or mother, unable to maintain himself or herself, is entitled to claim maintenance from his or her son. It is not clear from the section whether father or mother will also mean adoptive father and adoptive mother or step father or step mother. 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 it includes adoptive mother.³² However, Supreme Court resorted that a childless stepmother may claim

²⁷ Raibari Behra v. MAnjaraj Behra, 1993, Cr.L.J. 125 (Q).

²⁸ Rohtas Singh v. Smt. Ramendri, (2001) 1 DMC338 (SC); Bhagwan v. Sushma, (1999) 1 DMC 168 (DB).

²⁹ Yogeshwar Nath Mishra v. Arpana Kumari, 2003 Cr.L.J. 2625 (Pat); Baleshwar Mandal v. Anup Mandal, 2003 Cr.L.J. (NOC) 273 (Jhar).

³⁰ Section 125 (1) (b) of the Code of Criminal Procedure, 1973.

³¹ Vishwanadhulu Lingaiah v. Vishwanadhulu Kavitha, 2003 (2) DMC 283.

³² Baban v. Parvatibai, 1978 Cri.L.J. 1436 (Bom).

maintenance from her stepson provided she is a widow or her husband, if living, is also incapable of supporting and maintaining her.”³³

The expression ‘any person’ in section 125 connotes only father or son or husband and not a daughter.³⁴ However, it has been held that a daughter is also liable to maintain her father as expression “his father” would mean “her father”.³⁵ A daughter though married, is bound to maintain her parents. It will not be fair to exclude a well-to-do married daughter, who has an independent source of income, from carrying out this social obligation.³⁶

ESSENTIAL CONDITIONS FOR GRANTING MAINTENANCE

Sufficient Means to Maintain: According to Section 125 (1) “the person from whom maintenance is claimed must have sufficient means to maintain the person or persons claiming maintenance. The law intends that in either of the cases, the man shall be deemed to *have sufficient means*, if a man has good income from his property, he shall be said to have a man having sufficient *means*, though he himself may be incapable of doing any work. So also, if a man though, he is not possessed of property and has no income from any source but is well bodied man, it shall be presumed that he has sufficient means, thus sufficient means is not confined to pecuniary resources only,³⁷ it has to be inferred that he has the means to pay the maintenance.”³⁸

Neglect or Refusal to Maintain: The person from whom maintenance is claimed must have neglected or refused to maintain the person or persons entitled to claim maintenance. Neglect or refusal may be by words or by conduct. It may be expressed or implied.³⁹ But the burden of proving neglect or refusal is on claimant and is essential to get maintenance.⁴⁰ The term maintenance means proper maintenance and it should not be narrowly interpreted.⁴¹

³³ Kritikant D. Vadodaria v. State of Gujarat, (1996) 4 SCC 479; Ulleppa v. Gangabai, 2003 Cr.L.J. 2566 (Kant).

³⁴ Raj Kumari v. Yashoda Devi, 1978 Cr.L.J. 600 (P&H).

³⁵ M.Areefa Beevi v. Dr.K.M.Sahib.

³⁶ Vijaya Manohar Arbat v. Kashiram Rajaram Sawai, AIR 1987 SC 1100; Bhagwati v. Sunder Bai, 2005 Cr.LJ.1148 (Raj).

³⁷ Tejaram v. Smt. Sunanda, 1996 Cr.L.J. 172.

³⁸ Ranjana Shivaji Rakhpasare v. Shivaji Bapu Rakhpasare, 2004 Cr.L.J. 145 (Bom).

³⁹ Bikaji v. Manekji, (1907) 5 Cr.L.J. 334 (Bom).

⁴⁰ Dashrath Ghosh v. Anuradha Ghosh, 1988 Cr.L.J. 64 (Cal).

⁴¹ Purnashashi Devi v. Nagendra Nath, AIR 1950 Cal 465.

Person Claiming Maintenance must be unable to Maintain himself or herself: Under Section 125 (1) (a) maintenance allowance cannot be granted to every wife who is neglected by her husband or whose husband refuses to maintain her, but can be granted only if the wife is unable to maintain herself.⁴² However, if the wife is hale and healthy and is adequately educated to earn for herself but refuses to earn and claims maintenance from her husband, it has been held that she is entitled to claim maintenance but that her refusal to earn under the circumstances would disentitle her to get full amount of maintenance”.⁴³

SPECIAL REQUIREMENTS WHERE MAINTENANCE IS CLAIMED BY WIFE

a. The wife must not be living in adultery S. 125 (4): Adultery refers to a stage prior to the passing of the order in maintenance proceedings. It is an exception to the general liability referred to in Section 125 (1). He who claims exemption has to prove the existence of the circumstances for putting forward such claim.⁴⁴ It states the ground at which the Magistrate can refuse to enforce a maintenance order. It should be read with Sub Section (1) and (3) of Section 125. Adultery must be at or about the date of the application. Sub section (4) governs whole of the Section 125 including sub section (1).

Living in adultery means a continued adulterous conduct and not a single or occasional lapse from virtue. Solitary act of adultery or an isolated lapse of wife will not disentitle the wife to claim maintenance⁴⁵ and the burden of proof of unchastity is on husband. Unless it is found that at the relevant time the wife was actually living in adultery she is not disentitled to maintenance.⁴⁶ The accusation of adultery is sufficient cause for refusal on the part of wife to reside with the husband.⁴⁷

b. Wife must not refuse, without sufficient reasons to live with her husband: Provision of section 125 (4) applies to such a case in which wife ‘without any sufficient cause, denies to live with her husband and in the like said case, wife is not entitled for maintenance from her husband but there

⁴² Malan v. Baburao Yashwant Jadhav, 1981 Cr.L.J. 184 (Kant).

⁴³ Abdulmunaf v. Salima, 1979 Cr.L.J. 172 (Kant).

⁴⁴ Sharada v. Kumaran, 1977 Ker LT 945.

⁴⁵ Nirmaldas R. Alhat v. Sow, Sumita N. Alhat, 2006 Cr.L.J. 3635 (Bom).

⁴⁶ Samila Devi v. Shankar Dass, 1978 Cr.L.J. (NOC) 176.

⁴⁷ Baishnav Chandra v. Ritarani, 1993 Cr.L.J. 238 (Ori).

she should be authorized for the same where she leaves her husband's house due to some reasons.⁴⁸

c. The wife must not be living separately by mutual consent S. 125 (4): Husband and wife are living separately by mutual consent is a clear bar to her claim for maintenance under section 125 (4). This should be outcome of free agreement between the parties.

On proof of any of the circumstances in sub section (4) and (5) of Section 125, a maintenance order shall be cancelled by the Magistrate who made the order or his successor. If the order of maintenance has been made under Section 125 it will operate until vacated or altered in terms of sub- section (4) and (5) of Section 125 or 127 and it is enforceable, and no plea of co-habitation or of compromise can hold good as a valid defense to the execution of the order.

MAINTENANCE ORDER OF THE COURT AND IS ENFORCEMENT

Upon considering the evidence, and on satisfaction of the essential conditions for granting maintenance, the Magistrate may order the person proceeded against to make a monthly allowance for the maintenance of the applicant at an appropriate monthly rate, and to pay the same to such person as the Magistrate may direct from time to time.⁴⁹ “The fixing of the rat of the allowance is to be done on the merits of each case and the separate income and means of the person claiming maintenance are relevant circumstances to be taken into account for this purpose. The allowance for maintenance or interim maintenance and expenses for proceedings ordered to be paid shall be payable from the date of the order, or from the date of the application for maintenance, if so, directed by the court.⁵⁰

If any person ordered to pay a monthly allowance for maintenance under section 125 (1) fails without sufficient cause to comply with the order, the Magistrate making such order may, for every breach of such order, issued a warrant for levying the amount in the manner prescribed for levying fines.⁵¹ After the execution of the warrant, if whole or any part of the amount of

⁴⁸ Khangembam Daoji Singh v. Yumnann Ninglo Mema , 1995 Cr.L.J. 2326 (Gau).

⁴⁹ Section 125 (1) of the Code of Criminal Procedure, 1973.

⁵⁰ Section 125 (2) of the Code of Criminal Procedure, 1973.

⁵¹ Section 125 (3) of the Code of Criminal Procedure, 1973.

maintenance remains unpaid”, the court may sentence the defaulter proceeds against to imprisonment, which is a mode of enforcement rather than a mode of satisfying the liability.⁵²

QUANTUM OF MAINTENANCE

The upper limit of the amount of maintenance i.e. Rs.500 has now been removed by the Parliament vide the Criminal Procedure Code (Amendment) Act, 2001’ in the whole as such magistrate thinks fit and to pay the same to such applicant as the Magistrate may from time to time direct.⁵³

The fixing of the rate of allowance is to be done on the merits of each case and the separate income and means of the person claiming maintenance are relevant circumstances to be taken into account in fixing the rate.⁵⁴ In awarding the maintenance to the wife under Section 125 the Court should see that the rate is not such as would tempt the wife to permanently live separately from her husband, or if she already divorced to remain unmarried at least for long.⁵⁵ In one case the wife was awarded maintenance under Section 125 CrPC and alimony under the Hindu Marriage Act. Subsequently both were enhanced to Rs.800 each p.m.⁵⁶

The amount of Rs.500 was being raised by some High Courts.⁵⁷ The Parliament has amended Section 125 (1) by removing the clause ‘not exceeding five hundred rupees in the whole’. This amendment enables the courts to award maintenance depending upon the circumstances of each case.⁵⁸

SECTION 125 OF Cr.P.C AND HINDU ADOPTION AND MAINTENANCE ACT, 1956

“Section 4 (b) of Hindu Adoption and Maintenance Act, 1956 does not repeal or affect in any manner the provisions of Section 125 CrPC. There is no inconsistency between the maintenance Act and Section 125 of the code. The scope of the two laws is different. The Maintenance Act, 1956 is to amend and codify the law relating to adoption and maintenance among Hindus.

⁵² Kuldip Kaur v. Surinder Singh, (1989) 1 SCC 405.

⁵³ R V Kelkar, CRIMINAL PROCEDURE 829 (5th ed., 2011)

⁵⁴ Ramvati v. Udai Singh, 1976 Cri LJ 500.

⁵⁵ U H Khan v Mahaboobunnisa, 1976 Cri LJ 395; Syed Ahmad v N P Taj Begum, AIR 1958 Cri LJ 1201.

⁵⁶ Sudeep Chaudhary v. Radha Chaudhary, (1997) 11 SCC 286.

⁵⁷ Ramfood Mina v. Smt. Jagrati, 2001 Cri LJ 920 (MP) wherein the MP High Court gave retrospective effect to the enhancement of maintenance amount..

⁵⁸ Code of Criminal Procedure (Amendment) Act, 2001 (Act 50 of 2001).

Section 125 of CrPC provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. The remedies available under Section 18 of the Hindu Adoption and Maintenance Act 1956 and Section 125 of the CrPC are co-existent, mutually complementary, supplementary, in aid and in addition to each other. The remedy resorted to under either of the two cannot foreclose the remedy under the other Act.⁵⁹

SECTION 125 AND HINDU MARRIAGE ACT, 1955

The proceedings under CRPC and the Hindu Marriage Act, 1955 are distinct and different and they are worked for different purpose before the courts of competent jurisdiction. They do not overlap over the other. As such, where the interim maintenance is granted under Section 24 of the Hindu Marriage Act that does not warrant cancellation of maintenance allowed under Section 125 of CRPC, the maintenance granted by the criminal court under Section 125 shall also continue to be paid”.⁶⁰

SECTION 125 AND MUSLIMS WOMEN (PROTECTION OF RIGHTS AND DIVORCE) ACT, 1986

The issue of eligibility of a divorced woman to avail the provision of CRPC has been a subject of constant debate and refuses to die despite the Supreme Court’s consistent pronouncements in favour of the wife.⁶¹ In its historic judgment the Apex court in *Mohd. Ahmed Khan v. Shah Bano Begum*⁶², has held that section 125 is applicable to all irrespective of their religion. It does not matter that parties claiming maintenance belong to which personal law. In the instant case the court observed that section 125 (1) (a) contains no words of limitation so as to justify exclusion of Muslim women.

In the view of this revolutionary judgment “the Muslim fundamentalist raised lot of hue and cry resultantly the central government was compelled to bring legislation to this effect. Therefore, the Parliament passed a Muslim Women’s (Protection of Rights on Divorce) Act, 1986 providing

⁵⁹ Aher Menri Ramsi v. Aherani Bai Mini Jetha, AIR 2001 Guj 148.

⁶⁰ Rajendra Singh v. Maya Devi, 1996 Cr.L.J. 2036 (Mad), Vallabhaneni Yedukondalu v. Vallabhaneni Nageswaramma, 2000 Cr.L.J. 333 (AP).

⁶¹ ILI 2002 p- 356.

⁶² 1985 Cr. L.J. 875 (SC).

for other remedies to Muslim Women. This Act makes provision for the Muslims to avail remedies under Section 125 of the code if the husband consents to it. Consequently, the Madhya Pradesh High Court in *Mohd. Umar Khan v. Gulshan Begum*,⁶³ has held that in the absence of declaration by the husband under section 5 of the Muslim Women's (Protection of Rights on Divorce) Act, 1986, consenting to be governed by Section 125 to 128 of the Code, the wife is not entitled to avail remedied under these sections of the Code.

Later in *Danial Latifi and Anr. v. Union of India*⁶⁴, the validity of the Muslim Women's (Protection of Rights on Divorce) Act, 1986 was questioned. It was said that the Act does not comply with the norms of the Muslim personal laws. Also, it was argued that it is violative of Articles 14, 15 and 21 of the Constitution of India. But the validity of the Act was upheld by the Supreme Court of India. It held that a muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which includes her maintenance as well. Such a reasonable and fair provision extending beyond the *iddat* period must be made by the husband within the *iddat* period in terms of Section 3 (1) (a) of the Act. It further laid down that a divorced muslim woman who has not remarried and who is not able to maintain herself after *iddat* period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they can inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance". Also the Act was held to be non- violative of Articles 14, 15 and 21 of the Constitution of India.

In fact, there is no inconsistency between the provisions of Muslim Women's (Protection of Rights on Divorce) Act, 1986 and Criminal Procedure Code, as Muslim Women's (Protection of Rights on Divorce) Act, 1986 giving right of maintenance are in addition to the provision of Section 125 of Criminal Procedure Code.⁶⁵ The Muslim Women's (Protection of Rights on Divorce) Act, 1986 is retrospective in nature; a husband is bound to provide maintenance to his divorced wife, where divorce was effected prior to the Act.⁶⁶ A Muslim woman before divorce is

⁶³ 1992 Cr.L.J 899 (M.P.).

⁶⁴ AIR 2001 SC 3958.

⁶⁵ Shaikh Babbu v. Sayeda Masrat Begum, 1999 Cr.L.J. 4822 (Bom).

⁶⁶ Hyder Khan v. Mehrunnissa, 1993 Cr.L.J. 236 (Ker).

entitled to maintenance under Section 125 of Criminal Procedure Code, after divorce she is entitled to maintenance under the provisions of Muslim Women's (Protection of Rights on Divorce) Act, 1986.⁶⁷ There is no provision in the MWA act taking away or impairing any vested right acquired by a divorced woman to claim maintenance under the existing general law or personal law. The act does not create a new obligation, does not impose a new duty and does not attach a new liability in respect of the past transactions or considerations.

CONCLUSIONS AND SUGGESTIONS

Section 125 of the Code of Criminal Procedure, meant for the grant of maintenance, are not to be utilized for defeating the rights conferred by the legislature on destitute women, children or parents, who are victims of social environment. Obligation of a husband to maintain his wife arises out of the status of the marriage. Right to maintenance forms a part of the personal law. Under the Code, right of maintenance extends not only to the wife and dependent children, but also to indigent parents and divorced wives. Claim of the wife, etc., however, depends on the husband having sufficient means. Inclusion of the right of maintenance under the Code has the great advantage of making the remedy both speedy and cheap. However, divorced wives who have received money payable under the customary personal law are not entitled to maintenance claims under the Code of Criminal Procedure. Still the need for an amendment of Section 126 of the Code is there, so as to enable parents and children to initiate proceedings under Section 125 in the same place where they reside. Also, even the present Section 125 must be amended and widened to include women in live-in-relationship who is unable to maintain her.

It can be said that spousal maintenance though not an outdated concept, sometimes it is treated as one because it continues to sustain vestiges of a long dead relationship. However if seen it is rather an honest appraisal of the economic and social status of men and women in modern society. But it clearly deters the parties from entering into new relationships by the creation of financial obstacles and disincentives.

⁶⁷ Abdul Rashid v. Farida, 1994 Cr.L.J. 2336 (MP), See also Usman JKhan v. Fatimunnissa Begum, 1990 Cr.L.J. 1364.