

“WORK SHOP ON MAINTENANCE UNDER VARIOUS LAWS”

PRESENTED BY
SMT. L.DEVI RATHNA KUMARI,
JUDICIAL MAGISTRATE OF I CLASS,
SPL.MOBILE COURT, SRIKAKULAM.

The law provides for grant of maintenance in favour of the dependants of different categories. They include the spouses, children or parents. Relevant provisions are contained in Sec.125 of Cr.P.C., Hindu Adoption and Maintenance Act, Hindu Marriage Act, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, Domestic Violence Act, Family Courts' Act, the Muslim woman (Protection of rights on Divorce) Act, 1996.

Apart from those Laws, Sec.24 of Hindu Marriage Act confers right on a party, to an O.P. filed under various provisions of that Act to claim interim maintenance. The provisions read as under:

Sec.24 of Hindu Marriage Act - Maintenance pendent-lite and expenses of proceedings. The language of Sec.24 of the Act makes it clear that the maintenance granted under it is during the pendency of the proceedings before Court. Automatically, once the proceedings are disposed of, the arrangement, as to payment of maintenance also comes to an end. The claim can be made for permanent alimony U/Sec.25 of Hindu Marriage act, or an application can be filed U/Sec.125 of Cr.P.C. The amounts are granted under such provisions are different from each other.

If an appeal is presented by an aggrieved party against the order in the main proceedings, the same arrangement, that was obtaining during the pendency of the proceedings, before the trial Court, as regards payment of maintenance, may be directed to be continued.

(2010 (1) A.L.T. 395)

As per the citations of the Hon'ble Apex Court and various Hon'ble High Courts, it is clear that the proceedings U/Sec.24 of Hindu Marriage act U/Sec.125 of Cr.P.C. are different and they are invoked for different purpose before the Courts of competent jurisdiction. They do not overlap over the other. Sec.24 of Hindu Marriage Act are only invoked to meet a special situation where the proceedings

are pending before the matrimonial Court. U/Sec.127 of Cr.P.C. the party can seek cancellation on variation can approach the criminal Court.

(1996 (1) A.L.D. (Cri) 883)

An order for maintenance pendent-lite or for costs of the proceedings is conditional on the circumstance that the wife or husband, who makes a claim for the same, has no independent income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to claim of maintenance that the wife is educated and could support herself. Likewise the financial position of the wife's parents is also immaterial. The Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependant upon factual situation, the Court should, therefore, mould claim for maintenance determining the quantum based on various factors brought before the Court. At the time of claiming maintenance pendent-lite, when the respondent-wife had no sufficient income capable of supporting herself. The Hon'ble High Court was justified in ordering maintenance. The Hon'ble Apex Court observed that the maintenance amount of Rs.60,000/- ordered by the Hon'ble High Court in addition to Rs.10,000/- paid under Domestic Violence Act appears to be on the higher side and in the interest of justice the same is reduced to Rs.25,000/- per month. The maintenance pendent-lite of Rs.25,000/- is to be paid to the respondent-wife by the appellant- husband in addition to Rs.10,000/- paid under the proceedings of Domestic Violence Act.

(A.I.R. 2017 SUPREME COURT 1640)

The petitioner filed DVC against the respondents. The petitioner has filed a petition for amendment of prayer clause by incorporating some more prayers to grant monthly maintenance of Rs.15,000/- to the complainant and her two child to

their maintenance instead of Rs.5,000/-. To direct the respondent to return the STHREEDHAN amount of Rs.3,00,000/- and 15 sovereigns of gold ornaments and other reliefs and also direct the respondents to pay the cost of litigation to the tune of Rs.25,000/- so far spent by the complainant pursuing her litigation and also to direct the respondent to provide separate residence by taking rent portion with monthly rent of Rs.10,000/-. The learned Magistrate is empowered U/Sec.18 to pass protection order. U/Sec.19 of DVC Act authorizes the learned Magistrate to pass residence order, which may include restraining the respondent from dispossessing or disturbing the possession of aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondents or his relatives from entering the portion of the shared household, in which, the aggrieved person resides. Monetary relief, which can be granted by the learned Magistrate U/Sec.20 of DVC Act include giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children.

U/Sec.23 vests the learned Magistrate with the power to grant interim ex-parte orders.

It is made it clear that various kinds of reliefs, which can be obtained by the aggrieved person are of civil nature. The Hon'ble Apex Court further observed that Sec.28 of the DVC Act provides for that the proceedings under some of the provisions including Sec.18 and 20 are essentially are civil nature. A woman and children can claim maintenance U/Sec.125 of Cr.P.C. At the same time, these proceedings are treated essentially as of civil nature. The Hon'ble Apex Court observed in Para No.20 of the judgment that the amendment of the prayer clause of the DVC petition rightly allowed by the trial Court.

(SLP (Crl.) No.1537/2016 of Hon'ble Supreme Court of India)

As per Sec.3 (1) (a) of Muslim Woman (Protection of Rights of Divorce) Act, 1986, a divorced woman's right for maintenance is restricted only to the period of IDDAT and the husband is not liable to provide maintenance after the period of IDDAT and that he had deposited the entire MEHER amount and the maintenance amount for the IDDAT period with the District Government Kazi. The Act came into force after 03-03-1986. Act 25/1986 is only a prospective in operation and does not effect or invalidate the orders of maintenance passes prior to the Act of 25/1986 and become final. The order of maintenance was passed long prior to enactment of Act 25/1986 and has become final, the respondent wife is not entitled to claim maintenance under the said maintenance order beyond the period of IDDAT as per Sec.3 (1) (a) of the Act 25/1986.

(1997 (3) A.L.D. 409)

U/Sec.125 of Cr.P.C. provides and a cheap and speedy remedy to deserted wives, children and parents to secure maintenance. The provision intends to serve a social purpose. The question of quantum of maintenance allowance has also been examined with reference to the evidence of income of the petitioner.

The passage of time and the happening of events subsequent to the dismissal of the first application U/Sec.125 of Cr.P.C., constituted a change in the circumstances removing the bar of res-judicata. The husband filed application for divorce and declaration of marriage nullity was dismissed. interested in resumption of marital life. Husband not Second application by wife for maintenance is not barred by res-judicata.

(1989 CRI.L.J.398 – BOMBAY HC)

Mere possession of land by the petitioner's father, it does not mean that the daughter by virtue of a right for share in the property, can be presumed to have sufficient means to maintain herself.

(2000 (1)A.L.T. (Cri.) 275 (A.P.))

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the said Act received assent of the Hon'ble President of India and was published on 31-12-2007. This Act came into force in the state of Andhra Pradesh w.e.f. 28 th day of April, 2008 vide G.O.Ms.No.10 Women Department, Child Welfare and Disable Welfare (DW), dated 22-04-2008. By virtue of the Act, aged parents are entitled maintenance from their children. The Act provides financial support to the Senior Citizens and particularly who are neglected by the children.

The recent citations of the Hon'ble Apex Court about granting of maintenance U/Sec.125 of Cr.P.C., it was observed that merely because wife was earning something, it would not be a ground to rejection of her claim of maintenance. **(A.I.R. 2015 SC 554)**

In the another citation of the Hon'ble Apex Court about granting of maintenance U/Sec.125 of Cr.P.C., it was observed that U/Sec.125 of Cr.P.C. maintenance may be granted from the date of order or from the date of application, basing on the facts of the petitioner's case. The Hon'ble Apex Court further observed that the lower Court should record reasons in support of order by granting maintenance from the date of application or from the date of order.

(2015 (1) A.L.D. (Cri) 627 SC)

As per Sections 18 and 20 of the Hindu Adoptions and Maintenance Act, a Hindu is under a legal obligation to maintain his wife, his minor sons, his unmarried daughters and his aged parents whether he possesses any property or not. The obligation of maintenance in respect of the above is personal in character and arises on the relationship. The manager of a joint Mitakshara family is under a legal obligation to maintain all male members of the family, their wives and children and on the death of any male member, he is bound to maintain his widow and his children.

U/Sec.18 of the Hindu Adoptions and Maintenance Act, 1957 gives a right to the wife for maintenance. Wife is entitled to maintenance from the husband irrespective of the fact whether he possesses any property or not. The said maintenance is a matter of personal obligation arising out of the existence of relationship. Wife is not entitled to separate maintenance or residence, unless, she proves that for justifiable reason, she is compelled to separate from her husband as per Sec.18 (2) of the Act.

The wife is not entitled to separate maintenance and residence if she is unchaste or ceased to be a Hindu by conversion into another religion U/Sec.18 (3) of the Act.

U/Sec.19 of the Act, provides maintenance of widow daughter-in-law against her father-in-law.

U/Sec.20 of the Act, provides maintenance of children and aged parents.

Order 32 (a) of C.P.C., suits relating to matters concerning the family and Order 32 (a) (1) (2) (d) of C.P.C. provides a suit or proceeding for maintenance. Order 33 Rule-1 of C.P.C., suits may be instituted by indigent person for maintenance. The said suit was instituted under Order 7 Rule-1 of C.P.C. and under Order 33 Rule-1 of C.P.C. seeking recover the cost and future maintenance on behalf of the wife and minor children under Hindu Adoptions and Maintenance Act, 1956.

(I (1997) DMC 268)

The concept of maintenance. The term maintenance has not been defined in the Act. Therefore, the definition given to the term maintenance in the Hindu Adoption and Maintenance Act, 1956 assumes significance. U/Sec.3 (b) of Hindu Adoption and Maintenance Act, 1956 gives an inclusive definition to the term maintenance. As per the said definition, maintenance includes in all cases, provisions for food, clothing, residence, education and medical attendance and

treatment and in the case of an unmarried daughter reasonable expenditure incidental to her marriage.

(C.R.P. (P.D.) No.4001/2008 between Amutha @ Syamaladevi Vs. K.Thirumoorthy @ Thirumalaisamy)

The Hon'ble High Court of Delhi directing the Matrimonial Courts, should follow the procedure while granting interim maintenance/maintenance.

(1) Whenever maintenance/interim maintenance is ordered the Court will direct that it will be paid on or before 10th day of every month.

(2) Whenever the wife has Bank account and indicates it, such payment may directly be deposited in such Bank account every month.

(3) The payment shall be made to the wife or child and in any case of any difficulty in receiving or tendering the payment, it should be made through counsel.

(4) The order of depositing Court needlessly makes it difficult for the wife to withdraw amount from the registry of the concerned Court.

(5) If any amount deposited should be in the name of wife by a draft or crossed cheques.

(6) If there is first default for payment of maintenance, the Court may condone it. However in case of second default, without justification, it will opened to the Court to impose a penalty up

to 25% of the amount of monthly maintenance awarded and in the case of 3rd or 4th default, the penalty may go up to 50% of the amount of monthly maintenance. The Court must ensure that the orders of maintenance are not mere formal and it must be effective.

(Crl.M.C.No.1859/2008 between Rajeev Preenja Vs. Sarika and others, decided on 26-02-2009).

As per the Full Bench decision of Hon'ble High Court of A.P. reported in "1990 Cr.L.J. 1364 in between Usman Khan Behamani Vs. Fathimunnisa Begum

and others”, observed that Muslim woman (Protection of rights on divorce) Act, 1986, U/Sec.3, 4, 5 of Maintenance. Divorced Muslim wife cannot claim maintenance U/Sec.125 of Cr.P.C. after passing of 1986 Act. Liability of husband is limited for and during period of IDATH. A divorced Muslim woman cannot claim maintenance U/Sec.125 of Cr.P.C. from her former husband after passing of the Act of 1986.

(Also see Shah Banu case 1985 Cr.L.J. 875)

As per the decision of Hon'ble High Court of A.P. reported in “2004 (2) A.L.T. (Cri) 162 A.P. in between Shaik Apsar Vs. State of A.P. and others”, wherein, it was observed that Muslim Law TALAK right to maintenance. When there is no valid divorce as per Law laid down by Supreme Court in “2002 (7) Supreme 39”, wife continues to be entitled to maintenance. Since son is residing with father, maintenance granted to son is liable to be set aside.

Muslim Law – TALAK ingredients what is required to constitute a valid TALAK is pronouncement and there should be knowledge on the part of the wife.

Muslim Law – TALAK – Right to maintenance unless there is knowledge on the part of the wife – Right to maintenance will not be ceased.

ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARRENTS

U/Sec.125 of Cr.P.C.

(1) If any person having sufficient means neglects or refuses to maintain:-

- (a) his wife, unable to maintain herself; or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself; or
- (c) 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.

Validity of the marriage for the purpose of summary proceeding U/Sec.125 of Cr.P.C. is to be determined on the basis of evidence brought on record by the

parties. The standard of proof of marriage in such proceeding is not as strict as is required in trial of offence U/Sec.494 of I.P.C.

U/Sec.125 (3) of Cr.P.C. 2 nd provision where the husband is living with another woman it would entitled the wife to live separately and would amount to neglect or refused to maintain her.

(AIR 1999 SC 2374)

U/Sec.127 of Cr.P.C. Alteration in allowance - on proof of change in the circumstances of any person, receiving U/Sec.125 of Cr.P.C. a monthly allowance for maintenance or interim maintenance are ordered under the same section to pay monthly allowance. The Magistrate may make such alteration.

U/Sec.128 of Cr.P.C. Enforcement of order of maintenance – Sentencing a person to jail is a mode of enforcement and not a mode of satisfaction.

(AIR 1989 SC 232)

The personal presence of wife not necessary in M.C. proceedings as it is not a complaint.

(1984 Cr.L.J. 1460)

The objective of legislation to provide maintenance to the wife, children and aged parents, who are unable to maintain themselves. The strict proof of marriage of the petitioner is not necessary in a summary enquiry U/Sec.125 of Cr.P.C. proceedings. It is moral and legal obligation on the part of the husband to maintain his wife and minor children, so also, a duty cast upon son or daughter to maintain their aged parents.

As per the Maintenance and Welfare of Parents and Senior Citizens Act, 56 of 2007, rights provided to parents and senior citizens to claim maintenance from their children.

The wife is entitled pendent-lite and litigation expenses during the pendency of proceedings under Hindu Marriage Act and Hindu Adoption and Maintenance Act, and Family Courts Act. The wife is also entitled permanent alimony under Hindu Marriage Act.

A duty cast upon the Court to protect the rights of a destitute wife, minor children and aged parents. The main object of the granting maintenance to the wife, children and aged parents to meet their daily necessities, food, shelter, clothes and medicine.

(L.DEVI RATHNA KUMARI)
JUDICIAL MAGISTRATE OF I CLASS,
SPL.MOBILE COURT, SRIKAKULAM