

IMPLEMENTATION OF PROVISIONS OF SEC. 125, CODE OF CRIMINAL PROCEDURE: A CRITICAL STUDY WITH REFERENCE TO WOMEN

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ABSTRACT

The patriarchal form of society has remained the base in India in almost every aspect of culture and tradition which at times has traumatized the institution of womanhood and desertion of woman from the institution of marriage has remained the area of concern for legislature as well as judiciary.

The merit of legislation can be best judged upon the fulfillment of the desired outcome and welfare of the targeted section or part of the society. In the light of the foregoing the Section 125 of Code of Criminal Procedure (Cr.Pc.), was brought into effect to safeguard the deserted women from vagrancy and destitution. Therefore, it becomes extremely pivotal to ponder upon the relevance of the provision.

The purpose of study on the aforementioned topic is to discover the lacunae and highlight the feasible measures in proper implementation of Section 125 of Code of Criminal Procedure. The study vividly describes the object, scope, application of the said section and with the help of relevant case laws the challenges in its implementation is highlighted in the best possible way with the adequate remedies to tackle such odd instances.

Keywords: patriarchy, womanhood, marriage, safeguard, deserted, vagrancy, destitution, challenges, remedies.

I. INTRODUCTION

The section 125 of Code of Criminal Procedure aims to provide summary remedy to the dependent wife, children and parents in order to save them from vagrancy and destitution through means of maintenance. The ambit of the said section is wide and large, therefore in order to provide precision the author has confined the study to the impact and implementation of section 125 on women.

The sole object of this legislative provision is to accomplish the constitutional goals of social justice and the provisions mentioned in the said section is concurrent to Article 15(3) and Article 21 of the Indian Constitution. The provisions of the section 125 is also secular in nature as it is not affected by any personal law of any religion and its sustainability cannot be said to inconsistent with any personal law.

It is firmly believed “Gods dwell only in those homes where women are respected”. The judiciary admitting this through its various pronouncements has made clear that foremost duty of a man is to maintain his wife and children for which he may beg, borrow or steal. The provision of sec. 125 recognises the same principle and strives to enforce the legal and moral duty of husband.

The concept of women empowerment has remained in limelight in India since decades but has failed to built a social base for the implementation of legal structure. The provision of sec. 125 drifts itself from the women empowerment and thrives for women encouragement in case of being deserted by her husband and at times also socially excluded. The sole purpose of the said section is to provide effective, speedy and inexpensive remedy which sounds to be encouraging and supportive for deserted women.

The idea behind this study is not to appraise the legislative provision rather the study is focussed upon the actual implementation of provision. The foremost question arises that is sec. 125 of Cr.Pc. able to save women from destitution and vagrancy? The study further focusses on the social validity of the legal provisions of the sec. 125 and its capacity to safeguard deserted wives from destitution and vagrancy. The applicability and non- applicability of the said provision is also discussed in detail along with clarification on conflict between the provisions of the said section and personal laws of parties.

The challenges in the implementation of the provision is encountered and thereafter critically examining the present scenario through various judicial pronouncements and different legislation, the remedy to such challenges is advanced for smooth and effective enforceability of the said provisions in the society.

II. OBJECT & SCOPE

The object of Sec. 125 Cr.Pc. is to ensure speedy, effective and inexpensive remedy to the deserted dependent. The provisions safeguard the dependent wife from being neglected and refused from maintenance.

The Hon'ble Supreme Court in case of *Bhagwan Dutt V. Kamla Devi*¹ opined that provisions are aimed at preventing starvation and vagrancy leading to commission of crime. The aforesaid said section guarantees that neglected wife is not left beggared and destitute on the scrap heap of society and thrown in the darkness of immorality and crime for subsistence.

The section 125(3) expressly mention that breach of order may amount to fine and imprisonment extended to one month but it is interesting to note that object of the said section is not punitive rather provides only a speedy remedy by a summary procedure to enforce liability in order to avoid vagrancy.²

The provisions mentioned u/s. 125 must be liberally construed as the primary objective is to deliver social justice to women and children and to prevent destitution by compelling the man to extend support to his dependents in light of his social and moral duty.

The other nature of section 125 which makes it distinctive in scope is that of secularism. The said section is applicable to every person of the society irrespective of religion or castes and it cannot be held inconsistent with any personal law. The apex court in *Nanak Chandra V. Chandra Kishore Aggarwal*³ held that applicability of sec. 125 Cr.Pc. belongs to all religions and have no relationship with personal laws of the parties.

As previously described that concurrence of section 125 can also be traced with Article 15(3) and Article 21 of the Indian Constitution. The logic behind this statement can be proved as Art. 15(3) says that nothing should prevent state from making any law for women and children and same is the basic nature of sec. 125 as it is especially meant for women and children. On the other hand Article 21 talks about Right to Life and Right to have a dignified life which is in parlance to the object of safeguarding from destitution and eradication of vagrancy, misery and social exclusion which are the basis of dignified life.

The diversified scope and wide span of ambit is the beauty of this section but unfortunately despite such clear and simple objective it has remained as one of the controversial issue in

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¹ (1975) 2 SCC 386

² Madhavi v. Thupram 1987 (3) Crimes 183, 185 (Ker.)

³ (1969) 3 SCC 802

criminal as well as civil law which acts as impediment in its effective implementation and deprives needy women from getting benefitted.

The section 125 can only dispense justice when its mechanism is easy, speedy and inexpensive and if any of these components are divorced from each other the soul of the said section will die.

The objects of the section 125 needs to accepted *in toto* without creating any distinction between personal laws of the parties for its actual implementation and the wide scope of this section should not be curtailed and narrowed down by the complex and cumbersome legal tactics.

III. APPLICATION SECTION 125 OF CODE OF CRIMINAL PROCEDURE

The section 125 is applicable for maintenance to wives, children and parents. As already stated in the beginning that the study is focussed on women therefore under this heading the application and implementation of sec. 125 shall be limited to wives claiming maintenance.

The said section shall only be applicable wife who according to section 125 explanation (b) includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. The Hon'ble Supreme Court in case of *Savitaben Somabhai Bhatiya v. State of Gujarat*⁴ has made it clear that term wife u/s. 125 (I) means only a legally wedded wife and merely living together as husband and wife to the knowledge of public or otherwise cannot confer the status of women upon the women.

Though the section is not affected by personal laws but the validity of marriage would be determined by the personal laws of the parties as held by apex court in the case of *Yamuna Anantrao Adhoo v. Anantrao Shivam Adhoo*⁵.

The women who alleges that her husband has constituted a second marriage and committed bigamy u/s. 494 of Indian Penal Code if fails to establish to such second marriage in course of seeking maintenance it shall lead to denial of her claim to maintenance.⁶

The liability of maintenance u/s. 125 cannot be negated by the husband on the ground that he was compelled to marry the woman without observing the usual rituals and therefore the women

⁴ (2005) 3 SCC 636

⁵ (1985) 1 SCC 530

⁶ Samir Mandal v. State of Bihar (2001) 10 SCC 50

cannot be termed as legally wedded wife for the purpose of maintenance. The apex court held that strict proof of performance of essential rituals is not required.⁷

It is interesting to note that age of wife is not relevant for applicability for section 125. Even a minor wife being a legally wedded wife is entitled to claim maintenance and Marriage Restraint Act, 1929 as amended by Act of 2 of 1978 makes it punishable to contract a marriage with a minor girl i.e. below 18 years of age, yet the validity of such marriage is not affected by the contravention of the Child Marriage Restraint Act Act.⁸

- Essentials for applicability of section 125 Code of Criminal Procedure with reference to women.

The essential elements for the application of the aforesaid section are as follows:

1. The person from whom maintenance is claimed must have sufficient means to maintain the person claiming- The means as mentioned is sec. 125(I) cannot be said to be confined only to visible means such as property and employment but also extends to healthy and able bodied person and in such case he can be held to have sufficient means for maintenance.⁹ The judiciary have encompassed their vision in such a constructive manner that in catena of judgement it has laid down that husband may be insolvent or professional beggar or a minor or a monk, but must fulfil his duty of maintenance till he is able-bodied and can eke out of his livelihood.¹⁰
2. Neglect or refusal to maintain- The person from whom maintenance is claimed must have refused or neglected to maintain either may be words or conduct.¹¹ If a husband solemnizes second marriage or keeps a mistress in a same home, then his plea of bona fide offer of keeping his previous wife in the same home will not sustain and constitute enough ground for neglect or refusal to maintenance.¹² If it is proved to the satisfaction of the court that husband is impotent and unable to discharge marital obligation it creates a just ground for a wife to seek maintenance according to means of her husband.¹³

⁷ Dwarka Prasad Satpathy v. Bidyut Prava Dixit (1999) 7 SCC 675

⁸ R.V. Kelkar's, Criminal Procedure 839 (6th edition (Reprinted), 2016, Eastern Book Company)

⁹ Kandasamy Chetty, re, (1929) 27 Cri LJ 350,351 : AIR 1926 Mad 346

¹⁰ Basanta Kumari v. Sarat Kumar, 1982 Cri LJ 485,486 (Ori.)

¹¹ Bhikaji v. Maneckji, (1907) 5 Cri LJ 334, 336 (Bom.)

¹² Jadab Chandra v. Kausalya, 1975 Cri LJ 856,858 (Ori)

¹³ Sirajmohmedkhand Janmohamadkhan v. Hafizunnisa Yasinkhan, (1981) 4 SCC 250

3. The wife claiming maintenance must be unable to maintain herself- The object behind section 125 to section 128 Cr.Pc. is to prevent vagrancy, therefore a person cannot be compelled to pay maintenance another who is possessed with sufficient means.¹⁴ This provision is not for every wife who is refused to maintenance but only to those who lacks sufficient means to maintain herself.¹⁵ However the phrase “unable to maintain” only connote absence of means of source to maintenance and has nothing to do with potential earning capacity¹⁶ and also do not signify that woman be under absolute destitution and should be first on the street, should beg and be in tattered clothes. The necessary element is that she should not be much below the status compared to her husband’s place.¹⁷

- Non- Applicability of Section 125, Code of Criminal Procedure

The section 125 shall not be applicable under following circumstances:

1. Wife living under adultery- The sec. 125(4) says that living in adultery shall be constituted as enough ground for denial of maintenance. The word “living in adultery” signifies an outright adulterous conduct where the wife lives in a quasi- permanent union with an another man.¹⁸
2. Refusal by wife to live with her husband without just ground- The sec. 125(4) provides that wife shall not be entitled to any maintenance upon the ground that she refuses to live with her husband without any sufficient cause and if any maintenance is claimed in such situation it would not be sustainable.¹⁹
3. The wife must not be living separately by mutual consent- When both husband and wife decide to live separately then as provided u/s. 125(5) the maintenance cannot be claimed and if provided previously shall be cancelled upon discovery of this fact. Even in case of divorce by mutual consent wherein wife has relinquished her right to maintenance such cannot be claimed at later stage.²⁰

- Clarification Related To Personal Laws

¹⁴ Joint Committee Report, p.xiii.

¹⁵ Manmohan Singh v. Mahindra Kaur 1976 Cri LJ 1664 (A11)

¹⁶ Vimal v. Sukumar Anna, 1981 Cri LJ 210,216 (Bom.)

¹⁷ Abul Salim v. Najima Begum 1980 Cri LJ 232, 233 (All)

¹⁸ Kasthuri v. Ramasamy 1979 Cri LJ, 741,745 (Mad.)

¹⁹ Anil v. Mrs. Sunita (High Court of MP), Indore Bench [Cri. Rev. No. 829 of 2014, decided on 29 Nov. 2016]

²⁰ Shrawan Sakharan Ubhale v. Sau Durga Shrawan Ubhale 1989 Cri LJ 211 (Bom.)

The nature of the section 125 is completely secular in nature and under no circumstances loses its sustainability in contravention to any personal laws whether it may be under Hindu Personal Law or Muslim Personal Law or any other personal law which is in force.

The Muslim Personal laws allows women to claim maintenance only till the period of “iddat” but under sec. 125 it can be claimed even after the period of “iddat” until remarried.²¹ Similarly there is no inconsistency between sec. 125 and Hindu Adoption & Maintenance Act, 1956 as the scope of both the laws are completely different.

The husband with virtue of personal law may solemnize more than one marriage, but such second constitutes enough ground for first wife to stay separately and seek maintenance.²² The legislative intent behind this provision was to preserve the dignity of women whose husband is found living with another woman and therefore polygamy constitutes enough ground to seek maintenance despite of sanction from the personal laws.²³

The Hon’ble Supreme Court in the celebrated case of *Mohammed Ahmed Khan v. Shah Bano Begum*²⁴ stated that the said provision is truly secular in character and is different from personal laws of the parties. Provisions are essentially of a prophylactic character and cut across barriers of all religion.

Thus, it is evidently clear that questioning the provisions in garb of personal laws of sec. 125 is diluting its simple and unambiguous structure and hindering its noble idea of social justice.

IV. CHALLENGES & REMEDIES

The provisions framed within sec. 125 aims to accomplish its goal of social justice but has lacked in meeting the ends of justice due to few challenges. This part highlights few of such challenges and advances remedy for redressal for such impediments.

The challenges encountered during critical analysis are as follows:

1. The imprisonment of 1 month mentioned u/s. 125(3) is used as shield to deny the maintenance. As observed in many cases man refuses to give the maintenance amount and willingly opt for one month imprisonment. This attitude defeats the intention of

²¹ U.H. Khan v. Mahaboobunissa, 1976 Cri LJ 395,396 (Kant.)

²² Begum Subanu v. A.M. Abdul Gafoor (1987) 2 SCC 285

²³ Ghasitu v. Durga Devi, 1980 Cri LJ 885, 888 (H.P.)

²⁴ 1985 (1) SCALE 767

safeguarding deserted women from destitution and vagrancy. It has been held by apex court that imprisonment is only mode of enforceability and not of satisfying liability.²⁵

The remedy to such solution is that there must be enhancement in tenure of imprisonment to have deterrent effect and if found necessary, sentence of imprisonment must be for each month of default which must be strictly interpreted.²⁶ The court must also be empowered to sentence such person exceeding the period of imprisonment in case of repeated default²⁷ and this must be made expressly clear within the provisions. There must be increase in fine as well in case of breach of orders, which shall be twice the amount of maintenance.

2. The deserted women at times are socially isolated and refused shelter at her parental home. There must be rehabilitative provisions for such women and state must make shelter home and take care of such deserted women who have obtained the judgement for maintenance but husband has refused to pay the maintenance, till such orders of maintenance are enforced and women is benefitted. The government should also be made responsible through its enforcement agency for collection and recovery of amount.
3. The husbands at times abandons his property or transfer it to some other person to save himself from paying maintenance by showing that he is unable to do so. The Probation Officers must be taken into help for accessing the standard and social status of such person for enforcing the amount of maintenance.

The maintenance should be considered as secured debts for the deserted women and not the sweet will the husband.

The burden of proving for income must also be shifted to the earning husband and not upon the deserted wife.

4. In India the properties owned after marriage mostly is named after husband but the legal provision should be drafted in such a manner that all movable and immovable assets acquired must be jointly owned by the couple and equally divided when separated.

V. CONCLUSION

The provisions of sec. 125 of Code of Criminal Procedure is critically examined with prevalent socio-economic condition of the Indian society and actual condition of women after being deserted by her married life.

²⁵ Kuldip Kaur v. Surinder Singh (1989) 1 SCC 405

²⁶ *Suo Motu v. State of Gujarat* 11 (2009) DMC 197 (FB)

²⁷ *Ref. Sahada & Ors v. Amjad Ali & Ors*, (1999) 5 SCC 672

The study is an attempt to examine the legal provisions related to women u/s. 125 and extract the drawbacks in its implementation. As stated in introduction that due wide ambit of the said section the study is limited to women, so that each and every provision can be minutely examined.

The issue of practical implementation of laws has remained a major issue for most of the legislation and sec. 125 is no alien to it. The author aspires to highlight the encumbrances and foster the remedies, so that the object of legislation is realized and the ideas of social justice enshrined in the holy constitution is attained at its earliest.