LAW OF MAINTENANCE UNDER THE CRIMINAL JURISPRUDENCE IN INDIA

Diminishing Role and a Case for Restructuring

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The Background

Law of Maintenance in India, since the end of nineteenth century, at least in the territories under the administration of British Crown, has not been left to the juggleries of religious personal laws alone but has been made as part of secular criminal jurisprudence. The British Indian Parliament enacted Section 488 of the Criminal Procedure Code (Cr.P.C. for short) in 1898 for preventing vagrancy by making the male members of the family liable to take care of the weak and destitute wife, parents and children. While re-enacting the Cr.P.C. in 1973 after repealing the Code of 1898 the Parliament of Indian Republic followed the suit by inserting Sections 125 to 128 in Chapter IX with wider jurisdiction and compassion for ensuring maintenance of impoverished dependents. The democratic Constitution of India not only mandated protective discrimination under Art. 15 (3) in favour of women and children but also through the noble declarations in Articles 39 and 44 has accorded sanctions to such anti-insolvency welfare legislations. The judiciary, applying the ‘mischief rule of interpretation’, also played a very decisive role and through progressive activism enlarged the scope and extent of such legislations. Right to maintenance under the criminal law has in no way taken away the rights of the parties to avail the benefits of alimony under the personal laws. The law of maintenance has thus operated in dual spheres except in the case of divorced Muslim

1Chapter XXXVI of the Code of Criminal Procedure providing for maintenance of wives and children intends to serve a social purpose. As per Sec. 488(1), “If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.” 2Earlier the issues of sexuality, morality and polygamy, whichever the way they emerge, could always be turned against the women’s claims of maintenance. Gradually there is a change in judicial interpretations of sexuality, morality and adultery when it is used to contest women’s claims of maintenance. Flavia Agnes, Women and Law in India 33-41(2004). Also see: Syed Mohd Ghouse v Noorunniza Beegum, 2001 Cr LJ 2028, Sunita @ Kavitha Vivekanand More v Vivekanand More, 2001(II) DMC 693 (Bomb), Nishi Kant Halder v State, 2001 (I) DMC 119 (Cal),Mahesh Chandra v Additional Civil Judge, (I) 2001DMC 220.
women who have been deprived of the protection of Section 125 Cr.P.C., 1973 (hereafter ‘S.125’ for short) by the adversary legislative intervention in 1986 for nullifying the effect of *Shah Bano* dictum of the apex court. With the enactment of the Family Courts Act, 1984; the operation of Section 125 has been brought under the exclusive jurisdiction of the Family Courts.

The scope of Sections 125 to 127 has been enunciated by the Supreme Court in *Bai Tahira* which was reiterated in *Fazlunbi* in unequivocal terms:

> Whatever the facts of a particular case, the Code, by enacting Section s 125 to 127, charges the court with the humane obligation of enforcing maintenance or its just equivalent to ill-used wives and castaway ex-wives, only if the woman has received voluntarily a sum, at the time of divorce, sufficient to keep her going according to the circumstances of the parties. Neither personal law nor other salvationary plea will hold against the policy of public law pervading Section 127(3) (b) as much as it does Section 125.

Although the operational configuration of Section 125 has been held to be effective and pragmatic, figures from the Family Courts of Kerala shows that the number of people seeking shelter under this provision, of late, has been reduced considerably. The rate of growth of the number of proceedings under Section 125 in 2009-10 over the previous year was 5.6 percent whereas it has come down to (-) 11.75 percent in 2012-13. It is inexplicable that the reduction has happened when all cases taken together

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4 *Mohammad Ahammad Khan v Shah Bano and Others*, AIR 1985 SC 945.

5 As per sub-sections (b) and (c) of Section 8 of the Family Courts Act, 1984, the Magistrate of First Class has no jurisdiction or power under chapter IX of the Code of Criminal Procedure 1973.


7 *Fazlunbi v K. KhaderVali and Anr.*, AIR 1980 SC 1730.

8 The position was also upheld in *Mohammad Ahammad Khan v Shah Bano and Others*, supra note 4.

in the Family Courts of Kerala has registered the rate of growth of 5.91 percent in 2012-13 over the previous year. Similarly, it has been noticed that the share of cases under Section 125 in the total cases under the Family Courts also has come down sharply. An enquiry was conducted to ascertain this phenomenon in the Family Courts of Thiruvananthapuram, Ernakulam and Kozhikode districts. It has been observed that during the period of 2008-09 the number of cases under Section 125 in these districts was 1142 and the total number of cases in the Family Courts in these districts was 7152. In 2012-13, these numbers have come to 1194 and 9357 respectively. It shows that while the share of cases under Section 125 in all the cases in the Family Courts in these districts has come down from 15.97 percent in 2008-09 to 12.76 percent in 2012-13. (See Table below) This is a precarious situation that demands detailed scrutiny of the law and the sophistication involved in the implementation of it.

From the above figures, it appears that the confidence of the familial victims in the functional efficiency of Section 125 has been reduced considerably. This situation apparently points towards certain inherent problems in the law that has not been appropriately addressed through legislative interventions. Section 125 is a secular code, uniformly applicable to the weaker sections of domestic outfits and that needs to be updated and protected. In the absence of an effective secular law of maintenance like Section 125, the poor, weak and destitute in the familial edifice will be thrown out to the mercy of patriarchal and complex personal laws. Such a situation will be disgraceful to the secular fabric of the country and surely in contradiction to the welfare ideals of the Constitution. This paper attempts to discuss the law of maintenance under the criminal justice and highlight the major issues confronting the operational efficacy. It is also endeavour to submit certain suggestions to overcome the deficiencies in the law.

They represent the southern, central and northern parts of the State and belong to the erstwhile Travancore, Cochin and Malabar regions respectively. Except divorced Muslim wives who will be ruled by the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.
Every personal law in India has insistently recognized the responsibility of an adult male member of a family to maintain his close relatives like parents, wife and children\(^\text{12}\) when they are unable to take care of themselves. A transient observation of the provisions of various personal laws is enough to show the importance attached to the maintenance of destitute dependents in a family under such laws. Under the Shastric Hindu Law the head of the family is bound to maintain its members and one of the necessary incidents of joint Hindu Family is the right of maintenance.\(^\text{13}\) When the Hindu law was codified, appropriate provisions have been incorporated in the enactments for ensuring maintenance of the

\(^{12}\) Although under the Hindu Marriage Act, 1955 a destitute husband is eligible for maintenance from his affluent wife, similar provision is absent in other personal laws.

wife, children and parents.\textsuperscript{14} The Muslim Law of maintenance is a law of imperfect obligation imposing a moral and not a legal obligation.\textsuperscript{15} It suffers from indefiniteness and this was remedied by giving extended powers to the Qazis. However, in the absence of such discretionary powers with the present day courts, there is a lack of certainty in the law of maintenance. Right to maintenance of a divorced Muslim woman is provided in the Muslim Women (Protection of Rights on Divorce) Act, 1986\textsuperscript{16} and also under the prevailing customs. The provisions for maintenance for the Christians are contained in the Divorce Act, 1869.\textsuperscript{17} The Parsi Marriage and Divorce Act, 1936 also provides for maintenance.\textsuperscript{18} Although the principle is to do away with familial vagrancy and destituteness, wide variations can be observed at the operational level of the laws in fixing the eligibility of the parties to claim maintenance. The legal diversity is more palpable in the case of eligibility of maintenance of parents.\textsuperscript{19} In addition to the personal laws the secular laws like the Special Marriage Act, 1954 also contain provisions for the maintenance of wife.\textsuperscript{20}

\textbf{Intervention of the State and Making Law of Maintenance as Part of Criminal Justice}

Notwithstanding great ideals of protection of weaker sex and feeble physique under the customary laws, often the treatment meted out to such categories of people was not truly admirable. Moreover, the supports received by the weaker sections have not been considered as their right but deemed as charity. Hence there was no guarantee for the alimony or any compulsion, except the moral principles, to maintain one’s

\begin{itemize}
\item \textsuperscript{14} Two statutes which provide for maintenance for the Hindus are the Hindu Marriage Act, 1955 (Sections 24 and 25) and the Hindu Adoption and Maintenance Act, 1956 (Sections 18 and 21).
\item \textsuperscript{15} Sir Abdu Rahim, PRINCIPLES OF MOHAMMADEN JURISPRUDENCE, 62 (2001).
\item \textsuperscript{16} Section 3(a) of Muslim Women (Protection of Rights on Divorce) Act, 1986
\item \textsuperscript{17} Section 36 to 38 of the Divorce Act, 1869.
\item \textsuperscript{18} Section 39 to 41 of the Parsi Marriage and Divorce Act, 1936.
\item \textsuperscript{19} Though the Hindu parents had a statutory right under the provisions of the Hindu Adoption and Maintenance Act, 1956 and the Muslim parents too had some rights in this regards, there was no provision for maintenance of parents belonging to other religions.
\item \textsuperscript{20} Sections 36 and 37 of the Special Marriage Act, 1954.
\end{itemize}
dependents. This situation demanded the state to intervene and make the right to maintenance a legally enforceable claim.

In spite of clear and explicit anti-vagrancy stipulations in the personal laws, the British Indian Parliament exercised legislative wisdom to incorporate specific legal provisions in the criminal law of the country for granting right to maintenance to wife, children and parents from husband, father and son respectively. In Cr.P.C., 1898, Section 488 provided for subsistence maintenance, inter alia, of ill-used wives, parents and children who are unable to maintain themselves. The principal purpose of Section 488 was to prevent vagrancy by providing a summary magisterial remedy. In Bhagwan Dutt v Kanta Devi\(^\text{21}\) the court remarked that

Sections 488, 489 and 490 constitute one family. They have been grouped together in Ch. XXXVI of the Code of 1898 under the caption, "of the maintenance of wives and children". This Chapter, in the words of Sir James Fitzstephen, provides “a mode of preventing vagrancy or at least of preventing its consequences”. These provisions are intended to fulfill a social purpose. Their object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children. By providing a simple, speedy but limited relief, they seek to ensure that the neglected wife and children are not left beggared and destitute on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence.

When the Code of 1898 was substituted by Cr.P.C. in 1973, Section 488 was reincarnated as Section 125 with broader compassion and wider jurisdiction.\(^\text{22}\) The very purpose of making anti-vagrancy maintenance

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\(\text{21}\) AIR 1975 SC 83.

\(\text{22}\) Section 125, Cr.P.C.: Order for maintenance of wives, children and parent.

(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, or
provisions as part of the criminal code was to ensure uniform applicability of the provision irrespective of the personal laws of the parties to the suit. Section 125 is a comprehensive scheme for the maintenance of wife, children and aged parent. A suit for maintenance under personal law can be properly instituted (other than the provisions of Hindu Adoption and Maintenance Act, 1956) only when there are proceedings pending or decided under that law, whereas for filing a petition under section 125, matrimonial litigation is not a condition

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation.-For the purposes of this Chapter

(a) 'minor' means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875), is deemed not to have attained his majority;
(b) 'wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be;

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.
precedent. Also, the proceedings under section 125 are swift and summary. The Code of Criminal Procedure (Amendment) Act, 2001\(^{23}\) has also done away with the ceiling which, prior to the amendment, was Rs.500/-. The Family Courts are now bestowed with the responsibility of exercising the powers under Section 125.\(^{24}\) Section 126 (1) of Cr. P.C., 1973 permits the applicants in maintenance claims to file petition in any Family Court wherever they resides, or the spouse resides or where they last resided.\(^{25}\) In some cases the filing of petition can be anywhere at the option of the applicant.\(^{26}\)

**Scope, Extent and Applicability**

The proceedings under Section 125 are not punitive but of civil nature and the remedies provided under this Section are in the nature of civil rights.\(^{27}\) “This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39.”\(^{28}\) (emphasis supplied)

Section 125 enables a wife, who is unable to maintain herself upon proof of negligence or refusal by the husband who is having sufficient means, to claim monthly allowance for maintenance. The expression ‘means’ occurring in this section does not signify only the visible means such as real property of definite employment.\(^{29}\) If a man is healthy and able bodied, he must be held to possess the means to support his wife, children and parents and he cannot be relieved of his obligations on the ground that he is unemployed.\(^{30}\) The words ‘sufficient means’ should not be confined to the actual pecuniary sources, but should have reference to the earning capacity.\(^{31}\) Neglect or refusal to maintain may be express or implied, may

\(^{23}\) Act 50 of 2001.
\(^{24}\) By virtue of Sec.8 of the Family Courts Act 1984, the magistrate shall have no jurisdiction or power under Chapter IX of Code of Criminal Procedure, 1973
\(^{26}\) Vijay Kumar Prasad v State of Bihar & Another, AIR 2004 SC 2123.
\(^{28}\) Captain Ramesh Chander Koushal v Veena Koushal Supra 9.
\(^{29}\) Mangabhai Chotubai Patel v Maniben, AIR 1985 Guj 187.
\(^{30}\) Sucheta Dilip Ghate v Dilip Santharam Ghate, AIR 2003 Bom390.
\(^{31}\) Nagendrappa Natkar v Neelamma, (II) 2013 DMC 68 (SC).
be by word or conduct. It means something more than mere failure. \(^{32}\) Applicability of Section 25 in cases where the wife is a affluent has been raised before the court time and again and the High Court of Kerala in P.T. Ramankutty v Kalyanikutty \(^{33}\) took the view that:

...there is nothing in the section to show that in fixing the monthly allowance the Magistrate should consider the means of the husband alone and shut his eyes to the means of the wife..... The power to grant maintenance allowance is purely discretionary and the object of the section and its social purpose are to prevent vagrancy and destitution and not to punish a husband for having neglected or refused to maintain the wife or to enrich a wife who has already sufficient income for her maintenance.

Although the above ruling was under Section 488 of Cr. P.C. of 1898, the court took similar stand in cases under Section 125 as well. ‘Unable to maintain herself’ is the precondition for getting maintenance. \(^{34}\) It was clarified that:

There can be no doubt that when the Code was amended in 1973, it was at least further clarified unambiguously that a wife claiming maintenance under Section 125 must be a person "unable to maintain herself". If she has a settled employment or properties which fetch her an income sufficient to maintain herself, certainly she cannot be said to be a person unable to maintain herself. \(^{35}\)

The object of Section 125 is to prevent vagrancy by compelling a person to support his wife or child or parents unable to live themselves. Even if the wife is employed, that would not disentitle her from initiating action under this Section, if she can convince the court that even after employment she

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\(^{33}\) *AIR 1971 Ker.22.*

\(^{34}\) *Rajathi v. Ganesan*, AIR 1999 SC 2374.

\(^{35}\) *Muraleedharan v. Vijayalakshmi*, AIR 2007 (NOC) 61(Ker).
is unable to maintain herself.\textsuperscript{36} To come within the ambit of the phrase ‘unable to maintain herself, the wife need not be an absolute destitute.’\textsuperscript{37}

Sub-section (4) of Section 125 mandates that no wife shall be entitled to receive an allowance for maintenance from her husband, 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. Sub-section (5) enables the husband to get the order of maintenance passed in favour of the wife cancelled on any of the grounds above.\textsuperscript{38} The term ‘wife’ includes divorced wife also and she is entitled to get maintenance till her remarriage if she is unable to maintain herself.\textsuperscript{39} Explaining the foundation of section 125 the Court held that:

\begin{quote}
Under Section 488 of the Code of 1898, the wife’s right to maintenance depended upon the continuance of her married status. Therefore, that right could be defeated by the husband by divorcing her unilaterally as under the Muslim Personal Law, or by obtaining a decree of divorce against her under the other systems of law. It was in order to remove this hardship that the Joint Committee recommended that the benefit of the provisions regarding maintenance should be extended to a divorced woman, so long as she has not remarried after the divorce. That is the genesis of clause (b) of the Explanation to section 125(1), which provides that 'wife' includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.\textsuperscript{40}
\end{quote}

However, consequent to the enactment of Muslim Women (Protection of Rights on Divorce) Act, 1986 the law relating to Muslim divorced women

\textsuperscript{36} Minakshy Gaur v Chitranjan Gaur, AIR 2009 SC 1377.

\textsuperscript{37} Chaturbhuj v Sitabai, AIR 2008 SC 530. It is also clarified in various decisions that wife possessing MBA Degree (Tejaswani v Aravind Tejas Chandra, AIR 2010 228 (Karn) or Law degree (Murali Madhavan v Vijayalakshmy, AIR 2007 (NOC)61 (Ker)) or sufficiently educated for getting a job (Shiv Kumar v State of UP, AIR 2007 (NOC) 1274 (All) ) cannot be said to be capable of maintaining herself unless her income is proved.

\textsuperscript{38} Puliyulla Chalil Narayana Kurup v Thayyulla Parambath Valsala, II (2005) DMC 266.


\textsuperscript{40} Mohammad Ahamad Khan v Shah Bano and Others, Supra note 4.
is different. A Muslim husband is liable to make reasonable and fair provisions for the period of *iddat*. A divorced Muslim woman who has not remarried and who is not able to maintain herself after *iddat* period can proceed against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death, according to Muslim law.

In the event of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board to pay such maintenance.

A wife may seek maintenance even without any matrimonial litigation. She may stay separate if there are sufficient grounds justifying that and yet she will be eligible for maintenance. The fact that divorce has been obtained by mutual consent would not preclude a wife from claiming maintenance under Section 125. The settled position of law is that even if the wife had agreed not to claim compensation, it would be immaterial since any such agreement would be against public policy and hence not enforceable. The court has jurisdiction under Section 125 only to direct payment of future maintenance from the date of petition. A woman cannot stake the claim of past maintenance but entitled to get the same from the date of petition.

While maintenance provisions are welfare measures aimed at preventing destitution of wives, under Section 125, only a legally wedded wife can

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41 Period of *Iddat* means, in the case of a divorced woman, three menstrual courses after the date of divorce, if she is subject to menstruation, three lunar months after her divorce, if she is not subject to menstruation and if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier.


43 *Rajesh R Nair v Meera Babu*, (III) 2013 DMC 67 (DB) Ker.

44 *Anand Tukaram Nalwade v Latika Anand Nalwade*, AIR 2009 NOC 210, Bomb; *Suresh v Vidya*, AIR 2009 (NOC) 213 (HP).

45 *Thoombath Haris v Khadeeja Sherbi*, AIR 2010 (NOC) 230 (Ker).

46 *Dileep Kumar v State of UP*, AIR 2010 (NOC) 897 All ,see also *Pradip Kr. Saini v Seema*, 2010 (II) DMC 49 (Raj).
claim maintenance. Where a marriage suffers from legal flaw, which goes to the roots of validity of the relationship, the wife is not entitled to maintenance.\textsuperscript{47} There have been unfortunate situations where even a woman who has been defrauded by the man to enter into a bigamous relationship has had to suffer. In view of the Supreme Court rulings in Yamuna Bai v Ananta Rao\textsuperscript{48} and Bakulbai v Gangaram\textsuperscript{49} the settled position is that such a woman is not entitled to get maintenance. In Savitaben Samabhai Bhatiya v State of Gujarat\textsuperscript{50} the Court reiterated the stance and held that:

\begin{quote}
The law operates harshly against the woman who unwittingly gets into relationship with a married man and section 125 of the Code does not give protection to such woman. This may be an inadequacy in law, which only the legislature can undo. But as the position in law stands presently, there is no escape from the conclusions that the expression ‘wife’ refers to only legally married wife.
\end{quote}

Compliance of strict proof of marriage is not necessary in maintenance proceedings under Section 125 and some form of marriage is enough to uphold a wife’s right to maintenance. In Dwarika Prasad Satpathy v Bidyud Prava Dixit\textsuperscript{51} the Supreme Court explained that:

\begin{quote}
Validity of the marriage for the purpose of summary proceeding under Section 125 Cr.P.C. is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence under section 494 of the I.P.C. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and
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\textsuperscript{47} A man took a second wife during the subsistence of the first marriage, the second marriage being void, she is not entitled to get maintenance, Naurang Singh v Sapla, AIR 1968 All 412.  
\textsuperscript{48} AIR 1988 SC 644.  
\textsuperscript{49} (1988)1 SCC 537.  
\textsuperscript{50} AIR 2005 SC 1809.  
\textsuperscript{51} Dwarika Prasad Satpathy v Bidyud Prava Dixit, 2000 CrLJ (1) SC; Also see Santosh (Smt) v Naresh Pal (1998) 8 SCC 447.
wife, the Court can presume that they are legally wedded spouses...

The responsibility to maintain children is a moral obligation as well as a legal duty. The legitimate or illegitimate child is entitled to get maintenance till he/she attains majority and if the child is, by any reason of physical or mental abnormality or injury, unable to maintain himself or herself is entitled to get maintenance from the father even after attaining majority. A child is entitled get claim maintenance under section 125 independently of any matrimonial litigation between the parents. In Noor Saba Khatoon v. Mohd Quasim, it was held that:

the children of Muslim parents are entitled to claim maintenance under Section 125 Cr. P.C. for the period till they attain majority or are able to maintain themselves, whichever is earlier and in case of females, till they get married, and this right is not restricted, affected or controlled by the divorcer wife's right to claim maintenance...

It was further held that the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986 does not in any way affect the rights of the minor children of divorced Muslim parents to claim maintenance from their father under section 125 till they attain majority or are able to maintain themselves, or in the case of females, till they are married. This was reiterated in Mst. Bilkis Begum @ Jahanara v Majid Ali Gazi and Anr. Sub-section (1) (d) of Section 125 deals with the right of the parents to get maintenance from the children. Neglect or refusal by children and inability to maintain oneself is necessary to prove in such cases. A child against whom a parent stakes a claim cannot take a plea that the parent must reside with him or her to justify claim for maintenance under Section 125. A parent’s right to be maintained is not depending on his duties and

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52 Section 125 (1) (c) of Cr. P.C., 1973.
53 AIR 1997 SC 3280.
54 JT 2002 Suppl 1 SC 115.
55 In Cr. P.C., 1898 there was no provision for maintenance for the parents.
56 Attar Singh Jain v Amit Singh Jain, 1982 Cr. LJ 211(Del).
57 Balan v Devi, (1) 2009 DMC 701 (Ker).
obligations. Section 125 (1) (d) imposes a liability on both sons and daughters to maintain their father and mother who are unable to maintain themselves and there is no exception to a married daughter. Regarding the obligation of the daughter to maintain the parents it was held that:

The parents will be entitled to claim maintenance against their daughter, provided, however, the other conditions as mentioned in the section are fulfilled. Before ordering maintenance in favour of a father or a mother against their married daughter, the court must be satisfied that the daughter has sufficient means of her own independently of the means or income of her husband, and that the father or the mother, as the case may be, is unable to maintain himself or herself.

Traditional norms and values of Indian society laid stress on providing care for the elderly and children. However, appreciating the fact that the Indian personal laws have not been adequate in this area the State has intervened and made the law of maintenance as part of the criminal jurisprudence. Since the enactment is secular and uniformly applicable to all, irrespective of religions, it is desirable to enhance the scope and applicability of Section 125 for it being simple, less expensive and capable for speedy execution.

Challenges to the Efficacy

Compared to the provisions for maintenance under various personal laws, operation of Section 125 is supposed to be faster, more effective, less expensive and least complicated. As said earlier, the object of Chapter IX Cr. P.C., 1973 is to provide a speedy remedy by a summary procedure to enforce liability in order to avoid vagrancy. Explaining the purpose of section 125, the Madras High Court in Mani v Jaya Kumari held that “these provisions provide a speedy remedy to those who are in distress. They are intended to achieve this special purpose.” (emphasis supplied)

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58 Narayana Kurup v Valsala supra note 38.
60 Ibid.
61 1998 Crl. LJ 3708 (Mad).
Whatever be the legislative intent, providing remedies at a faster pace in the given administrative set up is nothing but an illusion. An applicant may have to wait for years to get the relief which is traumatic in the case of people who depend on a paltry sum of maintenance allowance to meet both the ends. In order to avoid such an awful situation the Criminal Procedure Code (Amendment) Act, 2001 was passed which inserted provisions for interim maintenance allowance. This has, to a limited extent, helped the parties to save themselves from abject poverty and vagrancy.

An order under this Section can be passed if it is proved that a person with sufficient means has neglected or refused to maintain his wife, children and parents who are not able to maintain themselves. The procedure is comparatively very simple and easier to comprehend. But, the major difficulties in establishing rights of maintenance under Section 125 are delay in execution, absence of public prosecutor, lack of investigative powers and other procedural delays due to counselling, mediation, adalat etc.

Execution of the order is one of the most difficult parts in ensuring justice in the proceedings under Section 125. If the respondents have avoided the payment of the amount awarded under this Section, the only available option is to issue summons or warrant to execute the order. These warrants are to be executed by the local police and in most of the cases it has been observed that there is laxity on the part of the police personnel in executing the warrant of maintenance. Lack of time and facilities are also major constraints in executing the maintenance orders. Since the imprisonment does not and cannot absolve the respondent’s liability to pay maintenance proper execution of the warrant of maintenance is an effective method to ensure prompt payment of maintenance. But this is not effectively implemented and the unscrupulous defaulters often circumvent the court directions.

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62 As per the amendment, during the pendency of the proceedings, the Magistrate may order payment of interim maintenance allowance and such expenses of the proceedings as the magistrate considers reasonable and to pay the same to such persons as the Magistrate may from time to time direct.

63 *Ajith Kumar v Shaima*, 2010 AIR (NOC) 229 (Ker).
Unlike in other criminal proceedings, the complainant under Section 125 is denied the services of a public prosecutor to submit their grievance. Since maintaining close relatives is declared as the obligation of an individual towards the society to prevent vagrancy and destitution, it should have been taken as the duty of the State to make it more effective for which the service of the public prosecutor is indispensable. But, unfortunately, such a system has not been thought of by the legislature or judiciary.

The computation of assets and liability of the respondent, including his monthly income for fixing the amount of maintenance is now based only on the documents produced by the applicant. In the absence of such documentary evidence, the only option before the court is to believe the words of the respondent. The victims, being women, children and aged parents, may not be able to collect and produce the records and evidence. They may not have access to such documents and records. It often results in awarding inadequate allowances not commensurate to the capability of the defaulter. In such situations, for ensuring justice to the hapless victims the Court should investigate to determine the assets and liabilities of the respondent. But such steps are not initiated by the Family Courts.

When a case for maintenance under Section 125 comes up for consideration the duty of the court is only to allow maintenance to the eligible applicants or deny it to ineligible claimants. There is no responsibility cast on the court to decide either on the status of the parties or on uniting or separating them. But even for the proceedings under Section 125 many practices like counselling which are essential only for divorce or similar cases are being followed. Without considering the relevance of such practices, the courts are making them mandatory. In every proceeding by the Family Courts, counselling is done at the first instance itself. Such meaningless practices are contributing substantially for the delay in disposing the cases. In adalat and conciliations, many number of sessions are conducted which are, from the point of view of granting maintenance, futile and unwarranted. But by taking recourse from the statutory provisions the courts are continuing with these practices which in fact reduce the efficacy of the law of maintenance under Section 125.

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64 Y.V. Chandrachud C.J. in Shabano case, Supra note 4.
Conclusion and Suggestions

The provisions under Section 125 are intended to fulfil a social purpose, which compel a man to perform the moral obligation which he owes to society in respect of his wife, children and parents. By providing a simple, speedy but limited relief, they seek to ensure that the neglected wife, children and parents are not left beggared and destitute on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. The jurisdiction conferred by the Section on the Magistrate is more in the nature of a preventive rather than a remedial jurisdiction; it is certainly not punitive. It is the duty of the court to interpret the provisions in Chapter IX of the Cr.P.C. in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under Section 125 to pay some reasonable sum by way of maintenance to the applicant, pending final disposal of the application. It is quite common that applications made under Section 125 also take several months for being disposed of finally. There is an inversely proportional growth is seen in the number family court cases and Section 125 proceedings. In order to enjoy the fruits of the proceedings under Section 125, some initiatives from the part of the judiciary and legislature are necessary.

For making the operation of Section 125 more effective, following suggestions are put forward:

1. Execution of maintenance orders is currently entrusted with the local police who have the responsibility of the law order also. Due to the overburden of the police personals, the execution of warrant in maintenance cases gets least priority. On the other hand, the women cell is the wing of police dealing with issues related to women and children and they have no authority to register crimes. For execution of summons or warrant in maintenance cases there is no necessity to register crime or detailed investigation or other procedural formalities but only to intimate or catch the offender. It would be advisable if the responsibility of execution of maintenance orders is entrusted to the women’s cell so that unwarranted delay is avoided.
2. Make appropriate amendments in the Family Courts Act, 1984 for making counseling an unwanted procedure for the cases under Section 125.

3. At present there is no enforcement machinery under Section 125 to investigate about the assets and income of the respondents. Had such a system operative, the maintenance orders would have been more righteous and reasonable. It is imperative that appropriate provisions are incorporated in the Cr. P.C. to make investigations about the assets and income of the respondent’s mandatory before passing the order of maintenance.

4. Unlike other cases coming under the purview of Cr. P.C., the help of Public Prosecutor/Assistant Public Prosecutor is not available in disputes under Section 125. State is duty bound to protect the life and personal liberty of the persons. Since the right to life includes a decent way of life by getting adequate maintenance from the husband, father or from the children, as the case may be, it is to be protected by the State. Hence the State is duty bound to provide the service of Public Prosecutor/Assistant Public Prosecutor to protect the rights of the destitute.

5. Even though Section 125 proceedings are treated as summary proceedings, it has not been enlisted along with other summary proceedings in Section 260 of Cr. P.C.\(^6\) In order to ensure speedy disposal of cases under the proceedings of Section 125, it is indispensable that necessary provisions for the time bound disposal of cases are incorporated in the Code.

In short, Section 125 is a piece of social legislation which provides for summary trial and speedy relief by way of maintenance to wife, children and parents. The social security concept envisaged by the legislature through Section 125 is to provide sustenance to a victim spouse, deserted parents and children so as to prevent vagrancy and destitution. This is in conformity with the great ideals enshrined in the Constitution of India. Hence it is imperative to secure and protect such a social legislation which can be achieved only through proper stock taking and remedial measures.

\(^6\) There are clear provisions in the Protection of Women from Domestic Violence Act, 2005 and the sexual Harassment of Women at Workplace (Protection, Prohibition and Redressal) Act, 2013 for time bound disposal of cases.