THE EVOLVING LAW OF MAINTENANCE IN INDIA: EXPLORING THE NEED FOR A GENDER-NEUTRAL LAW

Tanishka Goswami

Abstract

This article maps the development of maintenance law in India, with special emphasis on judicial attitude towards live-in relationships. Section 125 of the Criminal Procedure Code, 1973 attempts to deal with extension of maintenance in as secular a manner as possible; however, Hindu and Muslim personal laws are intervening factors. The challenges under Articles 14 and 15 of the Constitution are additionally pertinent in law in order to analyse the changing social dynamics in the country. Over the course of the article, the author seeks to explore the scope, if any, for gender-neutrality in the maintenance law in India.

Keywords: Constitution, CrPC, Gender-Neutral, Maintenance, Secular,

1) Introduction

In a layperson’s language, maintenance is the financial or manual labour required to preserve something in its original condition. What is termed the ‘evolution’ of human society essentially resulted in a deplorable situation for women worldwide. Even today, be it health or nutrition, most women in India are deprived of basic and fundamental necessities of life, both before and after marriage. This situation worsens when a woman either out of her own will, or due to the spouse’s coercion has to walk out of the institution of marriage. While the husband can sustain his material needs, a woman who has been abandoned seeks financial backing to set foundations of an independent life. This is principally due to the poor status of women in the Indian society, wherein they are restricted to the confines of their household with no source of income, totally dependent on the husband to sustain their life.

As a secular law, s. 125 of the Criminal Procedure Code, 1973 provides maintenance for wives, parents and children who are unable to maintain themselves. The 41st Law Commission Report clarifies that section 125, and other maintenance provisions under the CrPC extend a speedy and economical remedy in order to avoid situations of starvation and vagrancy among wives. In changing times, the section has been challenged as being violative of the right to equality in the

1 Il Year, National Law University Delhi
Constitution; there has been a call for making the provision gender-neutral. Cases such as 
Mohd. Ahmed Khan v Shab Bano and Danial Latifi v Union of India, and legislations such as Muslim Women (Protection of Rights on Divorce) Act, 1986, Hindu Adoption and Maintenance Act, 1956, Parsi Marriage and Divorce Act, 1936 have challenged the extent of the CrPC’s applicability on numerous fronts. Further, an enhancing number of live-in relationships and inter-religion marriages and adoptions have disputed the watertight enforcement of archaic CrPC provisions.

This paper seeks to comprehend and analyse the recent judicial trends with regards to maintenance provisions under the Criminal Procedure Code on two parameters: one, through an understanding of live-in relationships in an evolving Indian society and two, through an examination of Hindu and Muslim personal laws. The article looks at whether or not Indian personal laws are gender-neutral enough, or are accorded such interpretation by courts.

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

On 25th September 2019, the Supreme Court of India made a firm assertion with respect to the importance of maintenance as a welfare provision in the Criminal Procedure Code, 1973. In the case of Pratima Devi & Anr. v Anand Prakash, a wife and a minor son filed a petition under section 125 of the CrPC before the Family Court. While an ex parte order of Rs. 20,000 per month was passed by the Family Court, the same was stayed by the High Court in a criminal revision petition filed by the husband. This was done without recording any reasons. The apex court held: “A husband/father is duty bound to maintain his wife and child. Unless there are very special reasons, the higher Court should not normally stay such an order.”

This duty of the husband extends to his wife, minor child, no matter legitimate or illegitimate and father or mother, who do not possess the resources to maintain themselves. Section 125 of

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5Pratima Devi and Anr v Anand Prakash, Cr Appeal No. 1399 of 2019
4Ibid, p 3
the Criminal Procedure Code allows a Magistrate of the first class to order a person who has sufficient means, but neglects or refuses to maintain his wife, child, father or mother, to extend a monthly allowance. This mechanism only works when there is proof of neglect or refusal on part of the husband. As per explanation (b) to this section, “wife includes a woman who has divorced by, or has obtained a divorce from, her husband and has not remarried.” These words emphasize that to claim maintenance, it is essential that the woman has entered into the institution of marriage.

Can a woman under a live-in relationship be qualified as ‘wife’ in order to claim maintenance under section 125 of the Criminal Procedure Code, 1973? If yes, is there a set duration for which the live-in relationship should continue for the courts to make an order for maintenance? Would granting maintenance to live-in partners create a huge scope of misuse and open floodgates of litigations? These questions shall be addressed in this segment of the research paper.

(1) Live-in Relationships and Courts

An arrangement wherein a cohabits in the absence of a formal relationship called marriage is termed a live-in relationship. While it is an informal arrangement between intending individuals, a few countries allow for a formal registration in order to provide legitimacy to the relationship. In India, the judiciary has been conflicted on whether or not to allow maintenance to live-in partners. In 2005, Justices Arijit Pasayat and SH Kapadia in Somabhai Bhatiya v State of Gujarat categorically held that if a man and a woman choose to live together and indulge in sex without the institution of marriage, the ‘sacrosant honour of being a wife’ would not extend to the woman. The man was hence free to exploit the woman, and then go scot-free without having to take reasonable care of her future needs.

In a few years, the apex court recognized that allowing the male live-in partner to escape the economic liability of maintaining the female partner on the plea that the marriage suffered from a legal defect was detrimental to the latter's personal, professional and welfare interests. It was hence held that if the relationship subsisted for a reasonably long period of time, the same

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7 The Criminal Procedure Code, 1973, s. 125
8 Prof. Vijendra Kumar, “Live-In Relationship: Impact on Marriage and Family Institutions” (2012) 4 SCC (J)
9 Somabhai Bhatiya v State of Gujarat (2005) 3 SCC 636
10 Committee on Reforms of Criminal Justice System, headed by Dr. Justice V.S. Malimath
would not be termed as a ‘walk-in walk-out’ arrangement, and a presumption of marriage would result.\textsuperscript{11}

The primary question which emerges at this stage is, whether a female live-in partner in such arrangement for a long time, could claim maintenance under section 125 of the Criminal Procedure Code?\textsuperscript{2}

In the 2013 judgment of \textit{Indra Sarma v VKV Sarma}, the apex court had to decide “whether a live-in relationship would amount to a ‘relationship in the nature of marriage’ falling within the definition of ‘domestic relationship’ under section 2(f) of the Protection of Women from Domestic Violence Act, 2005?” The court outlined three necessary elements of common law marriage: (1) agreement to be married; (2) living together as husband and wife; and (3) holding out to the public that they are married.\textsuperscript{12}

The phrase “\textit{relationship in the nature of a marriage}” as under section 2(f) of the Act extends benefits to unmarried cohabitants. It was held that careful and close analysis of the live-in relationship is crucial in order to take all facets of the interpersonal relationship into account.\textsuperscript{13} A few indicators were culled out in order to enable the courts to decide whether marital remedies can be granted; these include duration of the period of relationship, shared household, financial arrangements, domestic arrangements, sexual relationship, and intention and conduct of parties.\textsuperscript{14}

The judicial trends have shifted to a reflection of social realities. However, it is pertinent to observe that it is an inherent assumption in the minds of legislators and judges, that it is the woman who would be in need of maintenance always. Even in the absence of codified legislation, it is an unsaid rule that the female live-in partner would require maintenance at the time of separation. The following section examines how maintenance under section 125 has been extended to individuals in live-in relationships.

\textbf{(2) What does section 125 of the CrPC reflect on maintenance in live-in relationships?}

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\item \textsuperscript{11} Madan Mohan Singh v Rajni Kant (2010) 9 SCC 209
\item \textsuperscript{12}Indra Sarma v VKV Sarma 15 (2013) SCC 755
\item \textsuperscript{13}ibid, p 40
\item \textsuperscript{14}p. 56
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The case of *Chanmuniya v Virendra Kumar Singh Kushwaha* has been authority on this matter. The facts of the case were such that the appellant and the first respondent were living together as husband and wife, and had been successfully discharging all marital obligations. In a few years, the first respondent began harassing and torturing his wife and refused to fulfil his marital obligations. As a result, the appellant initiated proceedings under section 125 of the CrPC for maintenance. The court held that where a man and woman are proved to have lived together as man and wife, the same will be presumed as a valid marriage unless the contrary is clearly proved.

While applying a legislation to a real-life scenario, it becomes critical to look at the history and intention behind the same. In *Nanak Chand v Chandra Kisbore Aggarwal*, the objective of section 488, the predecessor to section 125 of the Criminal Procedure Code was considered. The court held that maintenance under the Code is a summary remedy which can be extended to all persons irrespective of the person’s faith. It is, in no way related to the nature of remedy granted for in the parties’ personal law.

Further in *Capt. Ramesh Chander Kaushal v Veena Kaushal*, the Supreme Court held that section 125 of the Criminal Procedure Code is a reincarnation of Section 488, except for the fact that parents were not considered qualified for maintenance in the earlier section. The provision is hence a step in the direction of social justice, and has so been interpreted by courts. The central idea of the maintenance provision is to avoid destitution and vagrancy; if an attempt to gain the same is negated by the husband on grounds of non-existence of a formal ceremonious marriage, the very idea behind the section would remain unaddressed.

It is hence observed that maintenance under CrPC would be granted if conditions under section 125 are satisfied, irrespective of the individual’s personal law. While the primary fear of courts while granting maintenance to a live-in partner is paving away for misuse of the provision, the same can be avoided. In criminal proceedings, the burden of proof rests on the prosecution to prove the commission of an offence beyond reasonable doubt. It is only when the female live-in

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15 *Chanmuniya v Virendra Kumar Singh Kushwaha* (2011) 1 SCC 141
16 *Sastry Velaider-Arongary v Semibecutty Vaigalie* [L.R.] 6 App. Cas. 364
17 Kumar (n 7) J-26
18 *Nanak Chand v Chandra Kisbore Aggarwal* (1969) 3 SCC 802
19 *Capt. Ramesh Chander Kaushal v Veena Kaushal* (1978) 4 SCC 70
partner proves the existence of neglect, refusal, hurt or the like, will the court give serious consideration to the claim for maintenance.

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

On September 4, 2019, a plea was moved before the Supreme Court, challenging the constitutional validity of section 125 of the CrPC, on grounds of gender inequality. Before the contentions of the appellants are considered, it is critical to look at the words of section 125(1):

“(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
   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 1[* * *], as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct…”

On a bare reading of the section, it becomes clear that it is the male party to the relationship who would extend the monthly maintenance to the other. In the case before the apex court, the husband was obligated to provide maintenance to his divorced wife despite the fact that he was merely a high school graduate having a diploma in aircraft maintenance and was additionally unemployed. The two primary contentions of the petitioners in this case were: one, the provision violates the general equality principle under Articles 14 and 15 of the Constitution and hence prima facie discriminatory on the ground of gender, without reasonable
classification and two, it proceeds on a presumption that males have the ability to earn if they are healthy and able-bodied whereas a woman has the ability to earn when she has a source of sufficient income of her own, independent of their husband.

The petition hence asked the apex court to either strike down Section 125 of the CrPC as violative of the Constitution, or bring about a gender-neutral amendment to the same. The question which hence emerges is, is the right of a wife to claim maintenance absolute in nature?

(1) Courts on the Challenges to the Constitutionality of section 125, CrPC

Prior to the petition in September 2019, there has been no explicit appeal to the Apex Court regarding the validity of section 125 on grounds of Articles 14 and 15. Previously, in the case of Inderjit Kaur v Union of India and Others, the point in contention was the upper limit of Rs. Five Hundred/- being unreasonably low for a maintenance amount. This contention was addressed in the 2001 amendment to the CrPC wherein this upper limit of maintenance provided in Chapter IX of the Code was abolished.

Article 14 of the Constitution of India states that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.” This fundamental right is not absolute and is constrained in its ambit by the test of reasonable classification. As held in the case of Ajay Hasia v Khalid Mujib, the reasonable classification test based on intelligible differentia, is one of the means through which a Judge could decide whether there was an element of arbitrariness in the law or not.

In the words of Justice Krishna Iyer, “Section 125 CrPC is obviously a secular provision designed to salvage all divorced damsels in penurious distress, regardless of religion, from the throes of desperate destitution, which may drive them to prostitution and other survival

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22 Inderjit Kaur v Union of India (1990) 1 SCC 344
24 Ajay Hasia v Khalid Mujib (1981) 1 SCC 722
alternatives.” At the time when this Code was enacted, the Indian society was undergoing a phase where women were suppressed and denied their basic rights in the marital home, where they were subject to destitution and vagrancy in many instances, and when courts were also reluctant and lethargic in extending justice to such victims of neglect. Hence, it became necessary to introduce a provision which imposed the status of ‘criminal’ on a husband in case he did not fulfil his obligation of extending maintenance to a divorced wife.

In the case of Badshah v Urmila Badshah Godse, it was explicitly held that purposive interpretation becomes essential in cases where the court deals with hapless wives and destitute children. Section 125 of the CrPC was sought to be implemented in a manner which confirmed with the realities of the Indian society. It is critical to note today that women are becoming increasingly independent, both financially and personally; however, whether or not this growth is uniform is a pressing question. While those who speak against the implications of section 125 believe that a gender-neutral law is the burning need of today’s time, others believe that it is too early to do so, given the nature and influence of personal laws in the country. It is these aspects which the following segment will consider. The author will now seek to analyse the interconnectedness of personal laws in India with section 125 of the Code.

III. Is section 125 of the CrPC secular enough?

It is evident that the Criminal Procedure Code has sought to act like a secular law under which the remedy for maintenance can be sought. However, it is also important to take into consideration the ambit of personal laws in a country like India. This segment looks at the provisions for maintenance as under Hindu and Islamic personal law.

(1) Maintenance under the Hindu Personal Law

Maintenance pendente lite and permanent alimony are covered in two provisions of the Hindu Marriage Act: sections 24 and 25. The court looks at the petitioner and respondent’s monthly incomes while granting a decree for maintenance under section 24. This section makes no divisions on the basis of sex and ensures that the finances for the court proceedings are received by the needy party. Similar is the case with section 25, wherein even for permanent alimony, the

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26 Badshah v Urmila Badshah Godse (2014) 1 SCC 188
court looks at the respondent and applicant’s income and property while granting decree for maintenance.

Recently, in the first week of October, a two-judge bench of Justices Sanjay Kishan Kaul and KM Joseph heard a special leave petition against a judgment of the Allahabad HC. In the impugned judgment of Subrat KumarSen v State of UP, it was contended by the husband that the wife disobeyed the decree for ‘restitution of conjugal rights’ as under section 9 of the Hindu Marriage Act, and is hence staying away from the matrimonial home without sufficient reason. On this ground the High Court denied maintenance to the wife under section 125(4) of the Criminal Procedure Code. Sub-section 4 states:

“No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

It is the court’s discretion to decide whether or not there exists sufficient reason to preclude the husband from the responsibility of offering maintenance to the wife. While the judgment in the special leave petition is sub judice, the broader question of law is: do the reasons for denying maintenance to a wife nullify the impact of the gender-neutrality ensured in the Hindu Marriage Act? The grounds are: adultery, refusal to live with husband without any sufficient reason and living separately by mutual consent. As per section 25(3) of the HMA, if the wife does not remain ‘chaste’, maintenance can be denied by the husband. The underlying ground for denial of maintenance in both the secular, and personal laws, rests on the ‘sexual purity’ of the wife.

On 26th September, 2019, a two-judge bench of Justices AM Shaffique and N. Anil Kumar took a welfare-oriented approach by allowing maintenance to a wife despite the fact that the divorce was obtained on the grounds of adultery. The contention taken in the case was that ‘living in adultery’ means that the wife should continue to live in adultery despite the fact that the couple had been divorced on the same ground; the husband had also proved before Court that there was a single instance of adultery. The bench drew a distinction between the interpretation of

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27 Subrat KumarSen v State of Uttar Pradesh and Anr., SLA (Crl.) No.(s) 8994/2019
28 Ashok Kini, “SC to examine if a husband who obtained decree of restitution of conjugal rights liable to maintain wife” (Live Law, 5 October 2019) <https://www.livelaw.in/top-stories/is-husband-who-obtained-decree-of-restitution liable-to-maintain-wife-148758> accessed 3 November, 2019
29 The Criminal Procedure Code, 1973, s. 125(4)
30 Flavia Agnes, “Conjugality, Property, Morality and Maintenance”, Economic and Political Weekly, Vol. 44 No. 44
adultery as a basis for which divorce can be granted under s. 13(1)(i) of the Hindu Marriage Act, and for denial of maintenance as under s. 125(4) of the CrPC:

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

Section 125 has been enacted for a very specific purpose, i.e., to protect women and children from vagrancy and destitution. If the grounds for denial of maintenance are misinterpreted, and further applied with judges' preconceived notions, the actual benefit accruing out of the provision will be denied to women in need. It was for similar reasons that in Dr. Swapan Kumar Banerjee v State of WB, the Supreme Court noted that a wife divorced on the grounds of desertion would also be entitled to claim maintenance. Hence, it can be sufficiently concluded that while the Hindu Marriage Act does not create an inherent division when it comes to extension of maintenance, misapplication of section 125(4) would hamper the idea of gender-neutrality.

Under section 18 of the Hindu Adoptions and Maintenance Act, 1956, a division between the sexes is however created. The section allows for maintenance only to the Hindu wife and not the husband. It is substantially similar to section 125 of the CrPC in both its approach and objectives. The judiciary has invoked the maxim construction ut res magisquampereat, i.e., where differentiating constructions are possible, the court must enforce the one which suppresses the mischief the statute seeks to suppress, in order to uphold the wife’s right to maintenance. Even a second wife who was oblivious to the fact that her husband had entered into a bigamous relationship with her was allowed for maintenance on divorce. Therefore, much has been left to the court’s discretion in personal law issues. This has resulted in conflicting, but welfare-oriented judgments.

(2) Maintenance under the Muslim Personal Law

Since Muslim personal law with regards to maintenance is not codified, reference has to be made to judgments which thoroughly analysed the opinions of various Islamic jurists on the issue. In para 19 of Mohammad Ahmad Khan v Begum Shab Bano, the court examines the opinion of the Quran on maintenance to divorced wives:

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32Dr. Swapan Kumar Banerjee v The State of West Bengal & Anr., Criminal Appeal No(s). 232-233 of 2015.
33Suresh Khullar v Vijay Kumar Khullar (2005) 12 SCC 166
“For divorced women also there shall be provision according to what is fair. This is an obligation binding on the righteous. Thus, does Allah make His commandments clear to you that you may understand.”

The Muslim personal law, through the Quran, has imposed an obligation on the Muslim husband to make provision for maintenance to the divorced wife. This obligation, however, becomes ineffective post the three months of the *iddat* period. This period is three menstrual courses (if the wife is in that stage) or three lunar months subsequent to the date of decree of divorce. In case the divorced wife is pregnant, the maintenance period extends till delivery. The question which emerges on a consideration of Muslim personal law is: Whether or not there is a necessity for divorced wives to seek maintenance beyond the *iddat* period? And if such maintenance has to be sought, can the suit be brought under s. 125 of the CrPC?

An examination of section 127(3)(b) of the Code becomes crucial at this stage. This provision states that an order for maintenance passed under section 125 of the Code in favour of a woman can be cancelled if the woman has been divorced and has received the whole sum which she may be entitled to under customary or personal law applicable to the parties. While this provision seems like rescuing the husband from the obligation to pay maintenance, under *Bai Tabira v Ali Hussain*, the Supreme Court clarified that such absolute waiver does not work except on ‘proof of payment of a sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance.’ The amount under the customary or personal law has to be similar to the month-to-month maintenance decreed under section 125 of the CrPC. Hence, the judiciary has attempted to ensure that the real objective behind grant of maintenance is realized.

The author has earlier argued that Hindu personal law does not create a differentiation on the basis of sex for grant of maintenance; the only condition is looking at the income and property of both parties. In Islamic law, however, the absence of codified law has created a problem of discrimination against one gender. One of the earliest attempts at understanding this complexity was the landmark case of *Muhammad Ahmad Khan v Begum Shab Bano*.

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34 Dr. Taslima Monsoor, “Maintenance to Muslim Wives: The Legal Connotations” (1998) 9 DULJ 63
35 Bai Tabira A v Ali Hussain Fissali Chothia 1979 SCR (2) 75
37 The Hindu Marriage Act, 1954, ss. 24-25.
The law suit brings to light the tensions which can crop up when the constitutional notions of gender equality come into conflict with the interpretations of a particular faith’s beliefs. A 62-year old Muslim woman had petitioned the court for maintenance from her divorced husband Mohammed Ahmed Khan; the husband had already entered into marriage with another woman. The issue before the court was: whether the amount of maintenance can be provided beyond the *iddat* period, as allowed for under section 125 of the Code? The Supreme Court judgment was a milestone as it not only granted maintenance to *Shah Bano*, but also dwelt on the need to recognize the issue of gender equality.  

Subsequently, under pressure from conservative Muslims and other segments of the society, the Parliament enacted the 1986 Muslim Women (Protection of Rights in Divorce) Act. This Act reversed the Supreme Court’s judgment in the *Shah Bano* case. It now provided for a limited obligation to pay maintenance to a divorced wife only during the *iddat* period. There was wide outrage nationwide, with people calling the newly enacted legislation an attack on gender equality. The judiciary yet again took a firm stance in *Danial Latifi & Anr v Union of India*. The case dealt with a challenge of constitutionality against the Act. The Supreme Court took a ‘quintessentially universalist stance’ and decided the case on welfare, rather than communal constraints. The Court concluded that the obligation to pay maintenance during the *iddat* period co-existed with the requirement of making a fair and reasonable provision for a Muslim woman who has been divorced. This is to ensure her future well-being. The Supreme Court hence, upheld the constitutionality of the Act, but also brought in a remedy more effectual than provided under section 125, CrPC.

Tensions arise between feminism and multicultural or secular policy, and this has been observed in both, the court’s interpretation of Hindu and Muslim personal laws. Judges over the time have been hesitant in according certain provisions of personal law, a feminist understanding. This is both, due to their own preconceived notions and as a result of societal pressure. On October 29, 2019, the Allahabad HC in the case of *Jubair Ahmed v Ishrat Bano* opined that ‘section 125 is not a community-centric or religion-centric law, and perhaps the most secular enactment ever made in the country.’ In other words, courts have now recognized that social justice adjudication requires application of equality jurisprudence.

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39Danial Latifi & Anr v Union of India (2001) 7 SCC 740
40Jubair Ahmed v Ishrat Bano, Cr. Revision No. – 2509 of 2014; LiveLaw, “Section 125 CrPC is a tool to realize gender justice; one of the most secular law ever made: Allahabad HC” (LiveLaw, 29 October 2019)
IV. Conclusion

The author concludes that with changing social realities, courts have not hesitated in extending maintenance to the female live-in partner on account of neglect or refusal. Such maintenance has been accorded under a secular law like the Criminal Procedure Code, 1973 and not the personal laws of the parties. The same protects women, both rural and urban, who were earlier scoffed at as ‘mistresses’ or ‘keeps’ in judicial discourse, merely because of a technical defect in their marriage. The author recognizes that section 125 is not a gender-neutral provision and hence its application in cases of live-in relationships would also be for the female party. However, given the kind of social mechanisms and structures the Indian society has created and nurtured, it would be just and fair to allow for maintenance to deprived male partners only under their personal law. This would reduce both, the scope for misuse of section 125 as a remedy for exploitation, and allow the extension of a gender-neutral remedy.

Over the course of this paper, the author has argued that the interplay between the personal laws and the Criminal Procedure Code does not override the underlying ground of ensuring welfare of the wronged spouse. While it is recognized that the Code allows for maintenance to only the wife, the same is not unconstitutional and violative of Article 14. Keeping in mind the same argument, it is crucial to note that much emphasis has been placed on the courts’ discretion and judges’ application of judicial mind in order to ensure that the idea of creating a division of sexes in the Code does not destroy the objective behind the provision.

Hindu personal law has been codified in this regard, with the Hindu Marriage Act allowing for maintenance to either party, and the Hindu Adoptions and Maintenance Act allowing for maintenance to the female only. Islamic law, however, has not been codified. The apex court has sought to understand the opinion of the Quran, *sunnahs* and *hadiths*, to derive an interpretation of a welfare provision in favour of the wife. The conflict between the remedies in the Code and in the personal law have been resolved by clarifying the separate mandate of both. As of today, the Code is a secular enactment. While it is gender-specific, it is not community-centric. It would be interesting to see the transformation of the law into a gender-neutral one, which in today’s time, does not seem plausible.

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