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**MAINTENANCE OF WIFE: WHETHER SECTION 125 CRPC NEEDS TO  
BE GENDER NEUTRAL**- Sahil Afnan S<sup>1</sup>**Abstract:**

The question of whether Section 125 of the Code of Criminal Procedure (CrPC) should be rendered gender-neutral, particularly in the context of the maintenance of a wife, is a subject of significant legal and social debate. Section 125 of the CrPC is designed to provide financial support to wives, children, and parents who are unable to maintain themselves. However, the provision explicitly refers to wives, and the absence of gender neutrality raises pertinent questions about equality before the law. This abstract explores the arguments for and against the gender-neutral application of Section 125, analyzing the evolving societal dynamics and changing roles within marriages. Proponents argue that the traditional understanding of marriage has transformed, necessitating a more inclusive legal framework that acknowledges the diverse nature of contemporary relationships. On the other hand, opponents contend that the existing legal provisions adequately address the specific vulnerabilities faced by women in marriages and that a gender-neutral approach may dilute the protective intent of the law. The abstract delves into relevant legal precedents and comparative jurisprudence, scrutinizing the implications of potential amendments to Section 125 on the rights and obligations of spouses. Additionally, it examines the broader impact on societal perceptions of gender roles and responsibilities. By critically evaluating the arguments on both sides, this abstract contributes to the ongoing

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discourse surrounding the need for gender neutrality in laws governing spousal maintenance, shedding light on the complexities of balancing legal provisions with evolving social norms.

## **INTRODUCTION:**

Under Sections 125–128 of the Code of Criminal Procedure and other Personal Laws, the idea of "Maintenance" is addressed in India. The requirements of maintenance granted by different personal laws are unrelated to the rules of sections 125 to 128 that apply to all citizens regardless of their religious affiliation. These rules lay out a concise and efficient process for getting men to pay their social obligations, such as supporting their families (wife, parents, and children). Hunger and homelessness, which constitute a crime in and of themselves, are the primary targets of these regulations. To prevent the vulnerable dependents from being abandoned and discarded by society, these measures provide a quick and straightforward way to alleviate some of their financial hardship. The problem of gender disparity now arises. Males, not females, are the primary targets of legal efforts to ensure compliance with responsibilities.

It is considered a man's basic obligation to provide for his family (wife, children, parents, close relatives, etc.) as long as they are unable to do it on their own. Legally, a person owes a duty to support another person who is less fortunate than themselves. This duty extends beyond providing material goods; it is a measure of social justice and an extension of the inherent responsibility that every man has towards his family.

Many laws in India are ostensibly "women-centric" because of the difficulties Indian women have faced in the past. Actually, under Article 15(3) of the Indian Constitution, the state is empowered to provide particular measures for women. Even in this day and age, males often find themselves in victim roles. The case of a working woman demanding maintenance is one example.

## **GENDER EQUALITY AND EGALITARIAN SOCIETY CONCEPT:**

To gain a clear picture of the gender neutrality of Section 125 of the Code of Criminal Procedure, 1973, we must quickly examine the relationship between Art. 15(3) and Art. 15(1).

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This will help us understand how Section 125 has embodied the state's duty to make special provisions for women and children [Art. 15(3)] without violating the principle of equality before the law.

Article 15(1) forbids the state from treating its citizens differently because of their gender, religion, race, national origin, or any combination of these factors. When discrimination is based on only one of the grounds listed in Art. 15(1), it is just a violation of Art. 15(1) (1). A clause of the Bombay Police Act that allowed for the expulsion of anybody born outside of Greater Bombay upon conviction of any crime was invalidated in the case of *Sheikh Hussein v. Sheikh Mohammad*[iii]. This provision prevented criminal action against anyone born in Greater Bombay. In a similar vein, the U.P. Court Wards Act, 1912 was invalidated in *Rajeshwari v. State of Uttar Pradesh*[iv] because it discriminated against female proprietors on the basis of sex, namely, that they could not be granted any benefits from the act since it allowed male proprietors to manage their property while declaring them incapable of doing so.

If the state makes "special provisions for women," it may discriminate against males, according to Article 15(1) and Article 15(3), but only if its categorization is justified. To alleviate the plight of women in India's patriarchal culture, it is essential to mention that the courts have been very lenient in maintaining these particular rules. The Supreme Court's decision in *M.C. Sharma v. Punjab University*[v] limited its liberalism by upholding the unconstitutionality of the Punjab University Rule that barred male lecturers from being appointed as principal of Girl's College. The court ruled that the rule violates the constitution because there is no reasonable difference between a female and a male principal in terms of the ability to administer the school. Being a principal is more of an administrative task that requires personally developed skills and experience, so there is no logical connection between a candidate's gender and their level of competence.

It is a frequent misunderstanding that only a son is responsible for supporting his parents under Section 125, but in fact this is not the case. Famous examples like *Shah Bano Begum's*[vi] and *Daniel Latif's*[vii] reaffirm the idea of a patriarchal culture in which men are primarily responsible for providing for their families. When read in conjunction with Art. 15(3), this interpretation of maintenance creates an exception for women to support any member of their

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family. This problem, which has been encountered by Indian courts, will be addressed in the part that follows.

## **STATUTORY PROVISIONS FOR MAINTENANCE IN INDIA:**

### **Hindu Marriage Act, 1955**

No one outside of the Hindu faith may use the Hindu Marriage Act of 1955. If a Hindu husband or wife is unable to support for themselves, they are entitled to maintenance pendente lite and legal fees under Section 24 of the Act. Either spouse may seek maintenance from the other, either in the form of a lump amount or a quarterly payment, to cover living expenses, according to Section 25 of the Act.

### **Muslim Women (Protection of Rights on Divorce) Act 1986**

A Muslim woman is entitled to support from her husband during the iddat period according to Section 3 of the Muslim Women (Protection of Rights on Divorce) Act 1986. Based on the ruling in Danial Latifi v. Union of India, she is also entitled to reasonable and equitable arrangements to assist with her future needs (2001).

### **Parsi Marriage and Divorce Act, 1936**

The Parsi Marriage and Divorce Act, 1936 has maintenance rules that are comparable to those in Hindu law. A Parsi spouse has the right to seek support pendente lite under Section 39 of the Act. Permanent alimony or a monthly amount for maintenance may be claimed by either spouse under Section 40 of the Act.

### **Divorce Act, 1869**

The Divorce Act, 1869 is applicable to Christians. Section 36 and Section 37 of the said Act entitle a Christian wife to claim temporary and permanent maintenance respectively.

### **Special Marriage Act, 1954**

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The Special Marriage Act, 1954 extends to those who have married under this Act. Section 36 of the Act provides for maintenance pending the litigation and Section 37 of the Act provides for permanent maintenance in form of gross or periodic sum to the wife.

### **Code of Criminal Procedure, 1973**

Section 125 of the Code of Criminal Procedure provides for maintenance to not only wives but also children and aged parents. It is also pertinent to note that since it is a secular law, it can be enforced by any wife irrespective of her religion.

### **SECTION 125, CRPC, 1973; THREAT TO GENDER EQUALITY:**

The whole gender bias clause of Section 125 of the Criminal Procedure Code is unconstitutional. The clause expressly states that it would protect the rights of women and children but does not address the rights or interests of men in any way. Without a doubt, the clause was put into effect to safeguard women, who were seen as objects and lived in abject misery throughout that period. Please keep in mind that the supply is not there to satisfy the avarice of the weak, but rather their necessities. The general public has long held the view that males are inherently malevolent and nasty, which is why these regulations were put in place. However, we are in the 21st century, when women harass guys as well. This in no way suggests that harassment of women has ceased, nor does it suggest that the author is oblivious to the plight of women even in this day and age. However, these individuals are mocked whenever they attempt to seek justice at the police station.

But since the times have changed (the last amendment was in 2001), it is now more important than ever to amend the said law as well. Since the Constitution of India guarantees equality to men and women, laws should not contradict it by being biased towards one gender or the other. Certain argue that Section 125 of the Criminal Procedure Code is biased against women since certain dishonest women have begun abusing the weapon that was given to them.

### **CASES BACKING THE CONTENTION:**

1. Neeraj Aggarwal v. Veeka Aggarwal, Delhi District Court [2007]

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The woman claimed she couldn't support herself since her husband is ignorant, so she filed this action to get maintenance. But it came out in the subsequent processes that she has a degree in engineering and is also pursuing an MBA, so she can take care of herself just fine. Thus, the Court observed that, "One must come to the court with clean hands and shouldn't conceal the facts, no matter what. Since the lady is well educated, she can very well maintain herself and the family and there is no need for her to sustain on the mercy of her husband."

### 2. Mamta Jaiswal v Rajesh Jaiswal, MP HC [2000]

Because of her high level of education, the woman in this situation was able to support herself. But instead of going to work, she stayed home and begged her husband for money. The Hon'ble Court here observed that, "the said provision of maintenance is to safeguard the interests of the needy women and help those who are suffering at the hands of their in-laws. And it is not meant for that army of people who themselves by choice remain at home."

### 3. Firdos Mohd. Shoeb Khan v. Mohd. Shoeb Mohd. Salim Khan [2015]

Here, the woman falsely accused her in-laws of several abuses, including forcing her and her husband to live apart, brutal treatment, and psychological and physical abuse at the hands of her husband's relatives in exchange for a dowry. The petition was filed seeking a divorce and support, however these grounds were unfounded. However, the truth was revealed before the Hon'ble Court and thus S.A. Morey J gave a landmark judgment holding that, "people/ ladies/ wives who are well qualified and capable of maintaining themselves won't be provided maintenance at any cost as it would lead to grave injustice."

Although these judges have sided with males, they highlight the complexities and gaps in the criminal justice system, particularly section 125 of the Criminal Procedure Code of 1973. These examples further demonstrate how modern women are stepping ahead of their husbands' and in-laws' expectations, causing them unnecessary suffering and leaving them with little recourse. Beyond this, there have been other cases of women taking advantage of their husbands and in-laws while claiming protection under so-called laws meant to safeguard women.

## REFERENCE TO CONSTITUTION OF INDIA:

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Looking at the clause in question through the prism of the Indian Constitution makes it quite evident that it is ultravires to Article 14. Our Constitution rests on the thriving idea of equality and the many rights it affords; all other laws need to be based on this as well. Nevertheless, the aforementioned provision is illegal since it only protects women's interests while ignoring men's suffering.

## **EVALUATING ON THE TOUCHSTONE OF FUNDAMENTAL RIGHTS:**

### 1) Violative of Article 14 of the Indian Constitution

According to Article 14 of the Indian Constitution, every person is entitled to equality. Every citizen has the right to demand equality and speak out against injustice, which is inequality, and the idea of equal protection under the law. Restricting the power of the state to impose laws on its inhabitants that are obviously arbitrary is another goal of this article. Through the judicial review process, any law or part of a law that is shown to be contrary to the goals of Article 14 will be deemed unconstitutional.

Because it discriminates against males by limiting maintenance claims to wives, Section 125 of the Criminal Procedure Code of 1973 is invalid under Article 14 of the Indian Constitution. This section assumes that only women may confront the potential that maintenance becomes required, by not allowing males to claim maintenance. This eliminates the same possibility for men.

The Supreme Court of India's decision in the case of Preeti Srivastava (Dr.) V. State of M.P. created a precedent that all laws must serve the public interest and cannot be clearly biased against any group. This provision goes against that precedence. Also, as there is no justification for denying spouses the right to maintenance, the clause does not meet the reasonable categorization test under article 14 of the Indian constitution.

### 2) Violative of Article 15 of the Indian Constitution

The founders of our constitution saw the need to outlaw discrimination based on sex, religion, caste, etc., since it has been quite prevalent in Indian culture for a long time. Consequently, the act of discrimination based on religion, race, caste, sex, or place of birth is prohibited under Article 15 of the constitution.

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Because it unfairly distinguishes between men and women and grants maintenance rights to women solely, Section 125 of the Criminal Procedure Code breaches men's right to equality under the law (article 15). In addition, the following grounds render article 15(3), which authorises the state to establish specific arrangements for women and children, invalid as a basis for asserting its legitimacy:

- According to the opinion in *Mohammad Ahmed Khan v. Shah Bano Begum*, Section 125 of the Criminal Procedure Code is secular in character and is uniform. It is a flagrant violation of someone's right protected by article 15 to prevent them from claiming maintenance under the abovementioned part because of their gender. As far as I can see, this piece does not provide any grounds for challenging the constitutionality of section 125's gender-based nature.
- The patriarchal idea associated with Indian culture is still very much alive and well, and it is obvious that women need extra safeguards because of this. There is legislation that specifically seeks to safeguard women against injustice and promote social justice in this vein. Women might seek maintenance if they seem to be unable to sustain themselves under the provisions of those statutes that deal with monetary relief and maintenance. This proves that women require extra safeguards, but it doesn't establish the case for Cr.P.C. maintenance depending on gender.

### **GENDER-NEUTRAL MAINTENANCE AND HUMAN RIGHTS:**

It is essential to support the gender-neutral maintenance claim under section 125 of Cr.P.C. 1973 with the approach to human rights outlined in several international human rights treaties. State laws, particularly those concerning criminal justice, may be regulated by international human rights agreements.

It is the husband's legal obligation to keep his wife whole according to Section 125 of the Criminal Procedure Code, which adheres to the traditional male-female paradigm. Because of its bias against males, Section 125 infringes on their basic human rights.

Among the most significant global documents regulating human rights is the 1948 United Nations Universal Declaration of Human Rights. "Recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom,

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justice, and peace in the world," reads the official preamble of the Universal Declaration of Human Rights. Everyone, regardless of gender, is guaranteed equal access to all the rights outlined in the Universal Declaration of Human Rights (Article 2) of the Universal Declaration of Human Rights (UDHR). In addition, according to article 7 of the UDHR, everyone has the right to equal protection under the law and is considered equal before the law. Everyone has an equal right to seek effective recourse from courts of law in the event that they encounter injustice in any way, shape, or form, and this is most importantly stated in Article 8.

Additionally, the Yogyakarta Principles, which were introduced in 2007, have served as a framework for the elimination of any discrimination in legal systems related to sexual orientation and gender identity. Equal protection under the law is a fundamental human right, and this includes the freedom from discrimination based on a person's sexual orientation or gender identity.

In the first few words of the Preamble, it is stated that everyone has the right to live a dignified life and have equal rights, without any kind of discrimination. It also acknowledges the importance of human rights while making laws, especially those pertaining to criminal law. Its first principle is that everyone, regardless of their gender or sexual orientation, has the right to fundamental human rights and that the state must update its penal code to reflect the protections afforded by international human rights treaties. Principle 2 outlaws bias against people because of their gender or sexual orientation, while Principle 3 guarantees everyone the right to be recognised in legal proceedings. The most crucial part of Principle 28 is that it requires the state to establish tribunals where appropriate remedies may be administered in a timely manner and that everyone has the right to seek them out if their rights are infringed.

It is worth noting that the rights described above consistently employ gender-neutral wording. India must change or repeal any laws that seem to be discriminatory on the surface as it is a signatory to the Yogyakarta Principles. Navtej Singh Johar's case was one in which the Yogyakarta principles were affirmatively upheld by the Supreme Court.

## **OBJECTIVE OF THE PROVISION AND ITS CONTEMPORARY RELEVANCE:**

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The major reason for granting maintenance powers to women who are lawfully married or divorced is to stop them from becoming homeless or destitute. The goal of maintenance under section 125 of Cr.P.C. is to improve the economic situation of neglected spouses who are separated or divorced, as further stated by J. Krishna Iyer in *Bai Jahira v. Ali Hussain Fissall*. The goal of providing maintenance authority, according to HMJ K. Subba Rao and others, is to safeguard women, who are considered a vulnerable part of society.

While the aforementioned objectives may have seemed reasonable at the time they were articulated, they fail to take into account the current situation of the public. In 2020, there have been several laws and court rulings that have helped reduce the gender gap, so it is no longer accurate to classify women as a weaker part of society. Some examples of legislation that has greatly aided women in obtaining special protection include the Commission of Sati (Prevention) Act 1987, the Protection of Women from Domestic Violence Act 2005, the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013, and judicial decisions such as *ShayaraBano v. Union of India*, in which the Supreme Court declared Triple Talaq unconstitutional, and *Vineeta Sharma v. Rakesh Sharma*, which granted retrospective effect to coparcenary rights granted to women by the Hindu Succession Amendment Act 2005.

Restricting men's ability to claim maintenance under section 125 of Cr.P.C. is discriminatory, according to the aforementioned developments, which challenge the Hon'ble courts' justifications in the *Thomsigoundan* and *Gupteshwar Pandey* cases.

### **ADOPTION OF GENDER-NEUTRAL LAWS:**

Passage of gender-neutral legislation is the only viable option for addressing this anomaly. Regardless matter whether we're talking about personal laws or secular laws, they must always be in line with the Indian Constitution. There should be no religious or gender-based discrimination in the Code of Criminal Procedure since it is a secular law. It would be a significant injustice and a violation of the equality provision and the Preamble of our Constitution if it did not apply to males as well.

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They are able to claim "spousal maintenance" instead of "maintenance to just wives" in many developed and developing nations across the globe since these nations value gender neutrality. Among these nations are South Africa, Sri Lanka, Singapore, France, Russia, and the UK.

## **CONCLUSION:**

To sum up, it is clear that gender neutrality in all legislation, especially in the interpretation of Section 125 of the Criminal Procedure Code, is urgently needed. When we talk about gender equality, we mean that men and women should be treated equally and that no one, including women, should have any special rights, particularly in situations when a wife is visibly harassing or oppressing her husband. What we aren't saying is that protecting women's interests is no longer necessary. The author just means to say that laws should be made in a way that safeguards the interests of the vulnerable and impoverished, regardless of their gender. In light of the above, the author respectfully requests that the relevant authorities pay attention to this matter and make a sincere request to change laws in order to lift them out of their current state of gender bias and into a more egalitarian one.

## **BIBLIOGRAPHY**

- <https://lawtimesjournal.in/maintenance-a-gender-neutral-law/>
- <https://blog.ipleaders.in/analyzing-maintenance-for-men-in-india-under-different-personal-laws/>
- <https://theguardian.com/gender-neutral-maintenance-needed-revisiting-section-125-of-cr-c/>
- <https://www.legalserviceindia.com/legal/article-5831-maintenance-a-gender-neutral-law/>
- <https://indianlawportal.co.in/seeking-gender-neutral-laws/>

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