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ANALYSIS ON MAINTENANCE OF WIVES, CHILDREN AND PARENTS UNDER INDIAN LAW

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India is cluster or combination of many religion culture and race. The diversity of religious faith custom and culture forced our law maker for creating separate and general law for the protection of wives, children and parents despites of their religion and culture. There are personal laws to protect their custom, culture and religion while providing maintenance, protection and custody of wives, children and parents. At the same time our law maker decided to full fill the lacuna or loop-holes for making full proof protection of wives children and parents without giving consideration of their religion which is delt under personal law. They make general laws for supporting the protection of wives children and parents at any cost. These laws are strict and stringent in their nature. The general law bounds to protect wives children and parents whenever it is required to be protected and personal law are not bounded for that. There are several cases in which the honorable Supreme Court has decided that general law prevels to protect wives children and parent where personal laws donot give any remedy for its protection.

Under code of Criminal procedure 1973, Chapter 9 elaborate for maintenance of wife, children and parents under section 125 to 128. the Chapters speaks as "order for maintenance of wife children and parents". It denotes that our courts have covert power to pass order for maintenance of wife, children and parent as per requirement, no matter they belong to what religion and what is their personal law. This chapter of Cr. P.C. that is Chapter IX is over whelping on any personal laws. It is the honorable court who can decide the need of maintenance of wife children and parents and pass appropriate orders to pass for their maintenance. This order of honorable Courts are Mandatory and enforceable as per the provision of laws.

Chapter IX or Cr. P.C. enumerates sec 125 to 128.

Sec. 125- Order for maintenance of wives, children and parents. 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, 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, when 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.

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the interim maintenances of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct.

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within seventy days from the date of the service of notice of the application to such person.

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 have attained his majority.
- (b) "Wife" includes women 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 for the maintenance or the interim maintenance and expenses of imprisonment for a term which may entered 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.

Provide further that if such person offers to maintains 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 make an order under this section not withstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation- It a husband has contracted marriage with another women or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding as the case may be] 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 consort.

(5) On proof that any wife in whose favour or order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual concert, the Magistrate shall cancel the order.

126. Procedure- (1) Proceeding under section 125 may be taken against any person in any district-

- a) Where he is, or
- b) Where he or his wife resides, or
- c) Where he last resided with his wife, or as the case may be, with the mother of illegitimate child.

(2) All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summary cases.

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the court, the Magistrate may proceed to hear and determine the case and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with an application under section 125 shall have power to make such order as to costs as may be just.

127. Alteration in allowance: (1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, allowance for the maintenance or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration in the maintenance or the interim maintenance, as the case may be.]

128. Enforcement of order of maintenance :- a copy of the order of [maintenance or interim maintenance and expenses of proceeding, as the case may be] shall be given without payment to the person in whose favour it is made or to his guardian, if any, or to the person to [whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be] is to be paid, and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied

as to the identity of the parties and the non-payment of the [allowance, or as the case may be, expenses, due.]

The Criminal procedure code 1974 enumerate general law under sec- 125 to 128 for the maintenance of wife, children and parents. The honorable Courts have ample of power to pass order/orders for chair maintenance. Everyone is bound to obey the orders of honorable courts in this regard there is no expiation for personal laws. It is pertinent to state here that there are separate act known as the Hindu adoption and maintenance act 1956 which codified act in Hindu religion for maintenance of wife and children. The chapter 3rd of the Hindu adoption and maintenance act 1956 state under section 18 about maintenance of wife, sec 19 maintenance of widowed daughter - in - law, sec- 20 maintenance for that is mentioned is sec- 23 of the Hindu adoption and maintenance act 1956. Under sec 13 of the Hindu minority and guardianship act 1956 state about welfare of minor to be paramount consideration.

Muslim community as their own law they before the commencement of the Muslim women (protection of rights on divorce) act 1986 did not sanction the maintenance of wife. The Muslim women 1986 have given them exclusive rights of maintenance through this act under sec.- 4 that is order for payment of maintenance, Sec.- 5 option to be governed by the provisions of sec. 125 to 128 of act to of 1974. Whereas sec.- 3 Mahar" or order properties of Muslim women to be given to her at time of divorce.

The Supreme Court, is Mohd. Ahmed Khan v, Shah Baro Began and others, (AIR 1985 SC 945) has held that although the Muslim law limits the husband's liability to provide for maintenance of the divorced wife to the period of iddat, it does not contemplate or countenance the situation envisaged by section 125 of the code of Criminal Procedure. The Court the above Principle of Muslim law to cases in which the divorced wife is unable to maintain herself. The Court, therefore, came to the conclusion that if the divorced wife is able to maintain herself the husband's liability ceases with the expiration of maintain herself after the period of iddat she is entitled to have recourse to section 125 of the Code of Criminal Procedure.