
ROLE OF SECTION 125 THE CODE OF CRIMINAL PROCEDURE, 1973 IN PROVIDING SECULAR REMEDY FOR MAINTENANCE

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ABSTRACT

Section 125 of the Code of Criminal Procedure (CrPC) is an important secular law that guarantees maintenance for wives, children, and parents, no matter their religion or personal laws. This law aims to ensure that a nonsupporting spouse or parent contributes to prevent their dependents from becoming impoverished. Indian courts have consistently upheld the secular nature of Section 125, beginning with the case of *Bhagwan Dutt v. Kamla Devi* (1975). This case confirmed that the law seeks social justice regardless of religion or personal laws. It continued with *Mohd. Ahmed Khan v. Shah Bano Begum* (1985), where the CrPC was recognized as a secular law that takes priority over personal law, and *Danial Latifi v. Union of India* (2001), which confirmed that maintenance extends beyond iddat. Recent rulings have also supported the rights of divorced Muslim women under Section 125. The section is firmly rooted in constitutional principles, particularly equality and dignity, as seen in Articles 14, 15(3), 21, and the Directive Principles of State Policy in Article 39(e).

When looking at global comparisons, many legal systems have similar laws for spousal support that are not tied to religious practices. For example, UK laws provide equal maintenance rights for both spouses. In the US, state laws, influenced by the Uniform Marriage and Divorce Act, require alimony based on the needs and incomes of spouses. France and Germany also impose mutual support duties for spouses in their civil codes. Within India's diverse society, Section 125 plays a vital socio-legal role by providing a standard secular solution that protects women and children from all communities against neglect and financial difficulties.

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1. INTRODUCTION

The concept of maintenance, as a legal and social obligation, is rooted in the principle that no individual who is unable to maintain themselves should be left destitute when someone else, bound by law or relation, can provide for them. In India, maintenance provisions are found in almost all personal laws – Hindu, Muslim, Christian, and Parsi – but these vary widely in scope, eligibility, and procedure. In such a pluralistic society, where religion governs personal law, a conflict arises when maintenance rights differ across communities.

To address this, *Section 125² of the Code of Criminal Procedure, 1973* (The Code of Criminal Procedure, 1973) corresponding to the *Section 144³ of the Bharatiya Nagarik Suraksha Sanhita, 2023* acts as a **secular remedy**. It provides a uniform, summary, and speedy mechanism for granting maintenance to wives, children, and parents, irrespective of religion, caste, or creed. Its objective is not to enforce religious laws but to prevent vagrancy and destitution by compelling those with means to support their dependents.

The significance of Section 125 the Code of Criminal Procedure, 1973 lies in its **universality**. Unlike personal laws, it is applicable to everyone and focuses on social justice rather than religious doctrines. Landmark cases, most notably *Mohd. Ahmed Khan v. Shah Bano Begum (1985)⁴*, have emphasized that this provision transcends personal law barriers and ensures that the right to maintenance is available as a matter of constitutional and human rights.

This paper critically examines the role of Section 125 the Code of Criminal Procedure, 1973 as a secular remedy for maintenance, its evolution, scope, judicial interpretations, constitutional dimensions, and challenges. It argues that while Section 125 has played a crucial role in ensuring social justice, reforms are necessary to strengthen its enforcement and make it more inclusive.

2. LITERATURE REVIEW

Sections 125–128 of the Code of Criminal Procedure, 1973 are the source of secular law of maintenance. Section 125 is concerned with entitlement, Section 126 with jurisdiction, Section 127 with change of allowance, and Section 128 with execution. These sections collectively

² The Criminal Procedure Code, 1973

³ The Bharatiya Nagarik Suraksha Sanhita, 2023

⁴ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

constitute a self-contained code to ensure against destitution. Notably, the provision is summary in character to ensure a quick remedy without getting bogged down in long civil or religious litigation.

Academics such as Mulla, Derrett, and Flavia Agnes have stressed the significance of Section 125 in maintaining the equilibrium of the tension between personal law and constitutional protections. Agnes, for one, contends that the provision is an instrument of gender justice since it strengthens women who otherwise stand disadvantaged under personal laws.

Critics point out, however, that Section 125 has some drawbacks. It is restricted to ₹500 a month initially (although changed in 2001 to delete the cap, leaving room for discretion by the magistrate). Further, its implementation is weak since defaulting husbands tend to ignore orders. Although Section 125 has been described as a secular solution, research brings to light the problems of enforcement, gender neutrality, and conflict with other legislation. Low levels of awareness and procedural barriers still weaken its efficacy.

3. RESEARCH AIM & OBJECTIVES

The aim of this provision is to analyse how *Section 125 the Code of Criminal Procedure, 1973*⁵ pari materia to the *Section 144 of the Bharatiya Nagarik Suraksha Sanhita*⁶ functions as a secular remedy for maintenance and evaluate its effectiveness in delivering social justice.

Objectives:

1. To trace the historical development and scope of Section 125 the Code of Criminal Procedure, 1973.
2. To assess its secular nature and universal applicability.
3. To analyse landmark judicial pronouncements interpreting Section 125.
4. To examine constitutional and human rights dimensions of maintenance.
5. To identify challenges and propose reforms to strengthen the provision.

⁵ The Code of Criminal Procedure, 1973

⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023

4. CHAPTERS

Chapter I: Evolution and Scope of Section 125 the Code of Criminal Procedure, 1973

It was introduced to prevent vagrancy and to reduce the burden on society. It was expanded in the Code of Criminal Procedure, 1973 with recognition of parents' right to maintenance.

As a beneficiary, it includes – wives, divorced wives, legitimate/illegitimate minor children, major disabled children, and parents.

This provision of Section 125 the Code of Criminal Procedure, 1973 is now *pari materia* to the Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Chapter II: Section 125 the Code of Criminal Procedure, 1973 as a Secular Provision

It is applicable irrespective of religion and unlike the personal laws, Section 125 is based on economic dependence and not religious morality. Its foundation is social justice and not religious morality.

For example, the famous Shah Bano case⁷ where a Muslim woman was given the entitlement of maintenance as per this law.

Chapter III: Judicial Pronouncements

- **Bhagwan Dutt v. Kamla Devi (1975, SC)**⁸ – The Supreme Court in this case stressed that Section 125 is designed “to prevent vagrancy” by compelling support, and is “*applicable to all, irrespective of religion or personal laws.*”. The court described Section 125 as a “*measure of social justice*” transcending religious divisions.
- **Bai Tahira v. Ali Hussain (1978, SC)**⁹ – The Supreme Court in this landmark judgment reaffirmed that

⁷ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

⁸ Bhagwan Dutt v. Kamla Devi, 1975 AIR 83, 1975 SCR (2) 483

⁹ Bai Tahira v. Ali Husain, AIR 1979 SC 362

“every person who has been divorced is held to have the right to maintenance”, and that divorce itself

“does not dissolve” that legal right. Importantly, the Court explicitly noted that maintenance under CrPC

§§125–128 is “secular” – “People of any religion can be granted maintenance... irrespective of their personal laws.” Bai Tahira thus confirmed that even Muslim women divorced under personal law can invoke Sec.125 if unable to self-support.

- **Fuzlunbi v. K. Khader Vali (1980, SC)**¹⁰ – In this case involving a deserted Muslim wife, the Court remarked that the enactment of Section 125 (then CrPC 1898) embodies “a deliberate secular design” to enforce maintenance, “not confined to members of one religion or region, but [for] the whole community of womanhood.”. The judgment underscored that Sec.125’s object is humane social welfare, applicable to all wives regardless of faith.
- **Mohd. Ahmed Khan v. Shah Bano Begum (1985, SC)**¹¹ – Shah Bano’s case is the paradigm authority.

The five-judge bench unanimously held that a divorced Muslim woman could claim maintenance under Sec.125. The Court emphasized that the CrPC is “a criminal law and not a civil law,” and “applies to all citizens regardless of their faith”. It ruled that *personal laws cannot override constitutional rights*: fundamental guarantees (e.g. Art.14 equality, Art.15 (3) special protection for women, Art.21 dignity) prevail. Thus Shah Bano cemented that Section 125 is a secular remedy available to **all** women unable to support themselves.

- **Danial Latifi v. Union of India (2001, SC)**¹² – In Danial Latifi (upholding the 1986 Act on Muslim women’s rights on divorce), the Court clarified that the Act must be “beneficial and reasonable,” and that divorced Muslim women retain their secular maintenance rights. It declared Sec.125 an

¹⁰ Fuzlunbi v. K. Khader Vali, 1980 AIR 1730

¹¹ Mohd. Ahmed Khan v. Shah Bano Begum, AIR 1985 SC 945

¹² Daniel Latifi v. Union of India, AIR 2001 SC 3958

“available...secular protection” for women of all communities. The Court noted that the Muslim Women (Protection of Rights on Divorce) Act merely supplements Section 125 rather than abridging it, reaffirming that maintenance beyond the iddat period is constitutionally guaranteed.

- **Shabana Bano v. Imran Khan (2010, SC)**¹³ – In this case, a five-judge bench held that a Muslim woman’s right to maintenance under Sec.125 continues even if she remarries, and that Section 125 is *“secular”* and unlimited by the 1986 Act. The Court underlined that Section 125 applies to all married or divorced women, regardless of religion, and pronounced that a secular remedy cannot be circumscribed by any religious doctrine.
- **Recent Authority (2024, SC)**¹⁴ – In a recent decision (July 2024), a Constitution bench again confirmed that Section 125 grants divorced Muslim women an independent right to maintenance. The Court explicitly upheld that a divorced Muslim woman *“can file a claim... under Section 125 of the CrPC against her husband”*, notwithstanding the 1986 Act. Justices Nagarathna and Masih held that the secular provisions of Sec.125 coexist with personal laws; indeed, Masih J. noted that even the 1986 Act’s non-obstante clause cannot curtail the CrPC remedy. Nagarathna J. further observed that Section 125 is aligned with Articles 15(1), 15(3) and 39(e) of the Constitution – embodying a *“constitutional commitment to ensure a life of dignity for women... irrespective of the faith a woman belongs to”*.
- **Aseem Ahmad Khan v. State of U.P. & Anr.**^{15 16} - The Allahabad High Court quashed the Family

Court’s order directing the husband to pay ₹10,000 per month as maintenance under Section 125 Code of Criminal Procedure.

¹³ Shabana Bano v. Imran Khan, AIR 2010 SC 305, 2010 (1) SCC 666

¹⁴ SCC ONLINE , <https://www.scconline.com/Blog/Post/2024/07/11/Divorced-Muslim-Woman-Can-Seek-Maintenance-Under-Section-125-CrPC-Supreme-Court-2/#:~:Text=Considering%20the%20question%20whether%20a,119%20against%20her%20husband>

¹⁵ Aseem Ahmad Khan v. State of U.P. & Anr, CRLR No. 2068 Of 2024 (Allahabad High Court)

¹⁶ Aseem Ahmed Khan v. State of U.P. Judgement Copy - https://www.linkedin.com/posts/aklank-jain-associates_allahabad-hcon-wifes-capability-section-activity-7373434175028342784-HghN?utm_source=share&utm_medium=member_desktop&rcm=ACoAAEWrlh8Bk9dnfCHo52jEVi44SjaGPyhM2Gg

In this case:

- The trial court had held that the wife, a qualified B.D.S. dental surgeon, was capable of maintaining herself, yet still awarded maintenance on the ground of unemployment.
- Hon'ble Justice Madan Pal Singh found this reasoning contradictory and unsustainable in law.
- The matter has been remanded to the Family Court for a fresh decision within two months.

This judgment reinforces that Section 125 Cr.P.C. maintenance is available only when the wife is truly unable to maintain herself, not merely unemployed.

Each of these cases highlights Section 125's universality. From the 1970s onward, Indian courts have progressively broadened Sec.125 to cover divorced wives, emphasizing that its scope is *not* limited by personal law or religion. Crucially, no major judgment has ever confined Sec.125 to Hindu or non-Muslim women; instead, the Supreme Court has repeatedly characterized it as "*secular*", civil, and embedded in the Constitution.

Chapter IV: Constitutional & Human Rights Perspective

- **Article 14 & 15:** Right to equality and non-discrimination; maintenance laws must not favor one religion.^{17 18}
- **Article 21:** Right to life includes right to live with dignity, which requires financial support.¹⁹
- **Directive Principles:** Article 39 directs the State to ensure livelihood, Article 44 encourages UCC for uniformity.^{20 21}
- **International Law:** CEDAW requires states to protect women's rights, including

¹⁷ INDIA CONST. art. 14

¹⁸ INDIA CONST art. 15

¹⁹ INDIA CONST art. 21

²⁰ INDIA CONST art. 39

²¹ INDIA CONST art. 44

economic support.

COMPARATIVE PERSPECTIVES ON MAINTENANCE OBLIGATIONS

- **United Kingdom:** British family law provides spousal maintenance (sometimes called *alimony*) under the Matrimonial Causes Act 1973 and related statutes. UK courts consider both parties' resources, needs, and standard of living when awarding maintenance. Importantly, English law is gender-neutral: "*both spouses have an equal right to claim maintenance... regardless of gender*"²². The goal is to ensure that a financially weaker spouse can retain a marital standard of living post-divorce. The UK model, like India's Sec.125, imposes a secular obligation: religion or personal law does not affect one's right to seek support.
- **United States:** In the U.S., spousal maintenance (commonly "alimony") is governed by state statutes, often based on the Uniform Marriage and Divorce Act (UMDA) or state-specific family codes. Courts weigh factors such as income disparity, marriage length, and each spouse's needs and assets. Most states allow either husband or wife to claim support (no gender bias) if one spouse cannot be self-supporting.

For example, a typical Alabama statute provides guidelines considering each party's financial condition, age, standard of living.²³ Thus, as in the UK, American maintenance law is secular and uniform – there is no separate "personal law" maintenance for different religions. (Notably, even religious communities in the U.S. cannot override state divorce law, as marital agreements are subject to equitable distribution and support rules.)

- **France (Civil Law):** The French Civil Code imposes a mutual duty of support between spouses. Article 212 C.civ. (November 2023) explicitly states that by marrying, each partner agrees to provide material assistance to the other if "*he/she finds himself/herself in need*".²⁴ This reciprocal obligation cannot be waived by contract. The law also provides for post-separation maintenance if one spouse lacks resources. In short,

²² Spousal Maintenance In The UK: Common Faqs – Lexology-

<https://www.lexology.com/library/detail.aspx?G=A496f2daA0ba-46bc-B04d-D0187d160f80>

²³ What Is Alimony - Key, Greer, Harrison, & Casey - <https://www.keygreer.net/family-law-faqs/what-is-alimony/>

²⁴ Maintenance Obligation Related To Marriage: Spouse, In-Laws.... | Service-Public.Fr-
<https://www.servicepublic.fr/particuliers/vosdroits/F1196?Lang=En>

French law mandates financial support within marriage, reflecting a secular civic duty. The French maintenance regime applies to all citizens equally, without reference to religious law (indeed, French law is strictly secular).

- **Germany (Civil Law):** German law likewise enshrines spousal support obligations. Under the German

Civil Code (Bürgerliches Gesetzbuch) Section 1360 et seq., “*The spouses are reciprocally obliged to appropriately maintain the family through their work and with their assets*”. If spouses live apart, Section 1361 allows one to demand appropriate support from the other based on their financial circumstances.

Like India’s Sec.125, German maintenance duties are codified for the “collective maintenance of the family”. These provisions apply uniformly; religious identity is irrelevant in determining support obligations.²⁵

- **Other Jurisdictions:** In many secular democracies, maintenance is likewise part of general family law.

For instance, South Africa’s Divorce Act 1979 and Australia’s Family Law Act 1975 allow either spouse to apply for spousal maintenance; Canada’s Divorce Act includes support obligations likewise on a nofault basis. Similarly, in civil law countries (e.g. Italy, Spain), the civil code imposes a family maintenance duty. Across these systems, maintenance laws typically form part of public legal order rather than private religious law. In sum, India’s Section 125 finds parallels worldwide as a secular statutory remedy: it is not unique in its rationale, even if Indian law must navigate a plural personal-law context.

6. SECTION 125 AND CONSTITUTIONAL SECULARISM

The secular character of Section 125 strikes a profound chord with the values of the Constitution. The Preamble establishes India to be a "secular" republic, and the Directive Principles (Article 39(e)) and fundamental rights (Arts. 14, 15, 21, etc.) underscore equality and social welfare. The courts have held that Section 125 gives effect to such values by

²⁵ German Civil Code BGB - https://www.Gesetze-Im-Internet.De/Englisch_Bgb/Englisch_Bgb.Html

providing "special measures to ensure a life of dignity for women". In the recent SC judgment, Justice Nagarathna categorically connected Sec.125 with Articles 15(1) and 15(3) and Article 39(e) and added that maintenance is a "constitutional imperative" to safeguard vulnerable women at all stages of life. Likewise, the Bai Tahira court also stated that CrPC Sections 125–128 "reflects and expands the values of the Constitution" in safeguarding downtrodden persons' right to support.

In terms of Article 14 (equality), Sec.125 offers equal treatment in disregard of caste, creed or religion for maintenance. Article 15(3) specifically allows "special provisions for women," and Sec.125 is an archetypal such provision – it requires spousal maintenance as a gender-sensitive solution. Article 21 (life and personal liberty) has been construed to encompass a right to livelihood and dignity; protection under the law of maintenance secures an abandoned spouse's right to life from being narrowed down to destitution. In addition, Article 25 promises religious freedom insofar as it is subject to public order, morality and health; Sec.125 falls within that "public welfare" exception. Courts have often emphasized that personal religious beliefs cannot take precedence over constitutional assurances of equality and justice.

The debates of the Constituent Assembly show that the framers' aim was to enact uniform civil provisions for social welfare. While Sec.125 was not directly referred to in the debates, the framers relegated the protection of vulnerable family members to the state. In keeping with this, Sec.125 (earlier Sec.488 of CrPC 1898) was deliberately kept outside of personal law codes in order to allow destitute dependents to receive maintenance under a secular court process. As one observer puts it, Indian secularism "respects religious diversity" but insists that no religion can claim to justify withholding justice and dignity from citizens. Section 125 represents that ideal in the sense that it creates a uniform legal remedy available to all, transcending Hindu, Muslim, Christian or any traditional law.

Doctrinally, therefore, Section 125 is a hybrid: a criminal-procedural provision with a civil effect, but constitutionally approved as a welfare measure. Its social justice goal is congruent with DPSP Art. 39(e) (free legal aid and equal justice) and Art. 42 (human and just work conditions), and its anti-destitution purpose is similar to the wider welfare scheme of the Directive Principles. The Supreme Court has consistently interpreted Section 125 in consonance with fundamental rights and DPSPs, and not as an independent or minor charter. In *Bhagwan Dutt*, the Court emphasized Sec.125's remedial nature: although it finds place in

the Criminal Procedure Code, its essence is civil in the provision of sustenance. Similarly, Justice Masih observed that the CrPC scheme of maintenance is "derived from the State's responsibility for social welfare" and is not limited to a single religion.

Overall, Section 125 is the best example of Indian secularism in law: it is an equally applicable law that bypasses religious requirements in dispensing justice. By giving precedence to constitutional principles over personal law divisions, it emphasizes that gender justice and dignity are state duties that cut across community lines. As the Supreme Court has pointed out, the right to maintenance under Sec.125 is "embedded in the text, structure and philosophy of the Constitution" and purposefully oriented "irrespective of the faith a woman belongs to".

7. CONCLUSION / RECOMMENDATIONS

Section 125 the Code of Criminal Procedure, 1973 remains one of the most significant secular provisions in Indian family law. It cuts across religious boundaries to provide speedy relief to wives, children, and parents, ensuring that vulnerable dependents are not left destitute. Judicial interpretation has consistently upheld its secular character, harmonizing it with personal laws where necessary.

However, challenges such as weak enforcement, lack of uniformity in awards, and gender-specific application continue to dilute its effectiveness. To truly realize the constitutional promise of equality and dignity, reforms are needed. Making Section 125 gender-neutral, strengthening enforcement, and integrating it with broader social security measures would enhance its role as a tool of social justice.

Ultimately, Section 125 is more than a procedural provision—it is a reflection of India's commitment to **secularism, equality, and human dignity**. Strengthening it will not only protect vulnerable individuals but also move India closer to realizing the constitutional vision of a just and equitable society.