



“बेटी बचाओ, बेटी पढ़ाओ” JAYOTI VIDYAPEETH WOMEN'S UNIVERSITY, JAIPUR

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## **Faculty of Law and Governance**

**Faculty Name-** Ms. Tripti Negi

**Program-** BA LLB, Semester 6<sup>th</sup>

**Course Name-** Criminal Procedure Code

Session No.& Name – 2023-2024

Academic Day starts with –

Greeting with saying 'Namaste' by joining Hands together following by 2-3 Minutes Happy session, Celebrating birthday of any student of respective class and National Anthem.

Lecture Starts with-

Review of previous Session

National song 'VandeMataram'

Subject Name – Criminal Procedure Code

Topic – Maintenance under CRPC

## **Introduction**

### **Maintenance to Wife**

Section 125 (1) (a) of Criminal Procedure Code, 1973 provides that if any person having sufficient means neglects or refuses to maintain his wife, who is unable to maintain herself, then in such a case a magistrate of the first class may upon proof of such neglect or refusal, order such person to pay a monthly allowance at such monthly rate which the magistrate thinks fit.

Wife here includes a woman who has been divorced by or has obtained divorce from her husband and has not remarried.

The 'wife' under Section 125 (1) (a) means a legally married wife and can be of any age, minor or major.

The wife is not allowed to receive an allowance from her husband in three cases-

1. if she is living in adultery, or
2. if she refuses to live with her husband and without any sufficient cause, or
3. if they are living separately by mutual consent.

### **Maintenance to Child**

Section 125(1)(b) provides for maintenance to a child unable to maintain itself. The child here can be legitimate or illegitimate, whether married or not.

Section 125 (1) (c) provides for maintenance to legitimate or illegitimate child (not being a married daughter) who has attained majority but due to physical or mental abnormality or injury is unable maintain itself.

The magistrate, on proof of neglect or refusal to maintain the child, passes an order to pay monthly allowance at such fixed rate as it deems fit to be paid from time to time and to such person as the magistrate directs.

However, the Magistrate may order the father of a minor female child referred to in Section 125(1)(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.

### **Maintenance to Parents**

Section 125(1) (d) provides for maintenance to father and mother who is unable to maintain himself or herself.

A magistrate on proof that there has been refusal or neglect on the part of such person who has sufficient means may order to pay monthly allowance at such fixed rate as it thinks fit which would be paid from time to time to such person as the magistrate.

The daughter whether married or unmarried would also be liable to maintain the parents as the Indian society casts a duty on the children to maintain the parents and this social obligation equally applies to a daughter.

### **Essential Conditions for Maintenance**

1. **Sufficient Means to Maintain:** The person from whom maintenance is claimed should have sufficient means to maintain the person or persons claiming maintenance. The word 'sufficient means' should not be confined to the actual pecuniary resources but should have reference to the earning capacity.
2. **Neglect or Refusal to Maintain:** It has to be proved that the person from whom maintenance is claimed has neglected or refused to maintain the person claiming maintenance.
3. **A Person Claiming Maintenance Must Be Unable To Maintain Himself:** The requirement to pay maintenance should be only in respect of persons who are unable to maintain themselves.

### **Procedure for Maintenance**

Section 126 of CrPC deals with 'Procedure for maintenance'.

Proceeding under Section 125 may be taken in the following district:

1. Where he is, or
2. Where he or his wife resides, or
3. Where he last resided with his wife or mother of an illegitimate child.

### **Alteration in Allowance**

Section 127 CrPC provides for 'Alteration in Allowance'. Alteration means change in the monthly allowance, that is it may decrease or increase according to the change in the conditions of the parties.

According to Section 127(1) if a magistrate ordered to give allowance for maintenance under Section 125 according to the conditions of parties at that time, but if the present conditions of parties have changed, then he can also order to alter the allowance.

According to Section 127(2), the Magistrate shall cancel or revoke any order given under Section 125 by him, if it appears that it should be cancelled in consequences of any decision of the competent Civil Court.

According to Section 127(3), where an order has been made in favour of women under Section 125, then the magistrate can cancel the order in the following case:

1. If a woman is remarried after divorce.
2. If a woman has taken allowance under any personal laws after divorce.
3. If a woman has voluntarily waived her right to maintenance.

According to Section 127(4), the Civil Court shall take into account the sum which has been paid to such person as monthly allowance for maintenance and interim maintenance under Section 125 at the time of making any decree for the recovery of any maintenance or dowry.

### **Enforcement of Order of Maintenance**

Section 128 deals with 'Enforcement of order of maintenance'.

A copy of the order under Section 125 is given to that person free of cost in whose favour it is made. In case the order is in favour of children, then the copy of the order will be given to the guardian of children.

If any Magistrate has made an order under Section 125, then any Magistrate of India can enforce this order where that person lives who has to give maintenance.

The Magistrate has to satisfy two conditions before enforcement of order:

1. Identity of parties, and
2. Proof of non-payment of allowances