



## MAINTENANCE FOR HINDUS UNDER THE PERSONAL LAW WITH SPECIAL REFERENCE TO CODE OF CRIMINAL PROCEDURE – A CRITICAL ANALYSIS

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### INTRODUCTION

The liability of a Hindu to maintain others arises in some cases from the mere relationship between the parties. A Hindu is under a legal obligation to maintain his wife, his minor sons, his unmarried daughters and his aged parents, whether he possesses any property or not. The obligation to maintain these relations is personal in character and arises from the very existence of the relation between the parties. The various section which deals with the question of maintenance of wife and to some extent maintenance of husband are going to be discussed in this Article.

### Maintenance, Meaning of:

The term "Maintenance" has not been defined under the personal law<sup>1</sup> applicable for Hindus as well as in special law<sup>2</sup> applicable to all. But, according to chapter III of the Hindu Adoption and Maintenance Act, 1956, it has been defined as follows:

"Maintenance<sup>3</sup>" includes (i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment; (ii) in the case of an unmarried daughter also the reasonable expenses of and incident to her marriage;

Though chapter IX of the Code of Criminal Procedure, 1973 deals with "order for maintenance of wives, children and parents" no definition has been given under that Code, 1973. The Code simply says that "If any person having sufficient means neglects or refuses to maintain-

#### (a) his wife, unable to maintain herself, or .....

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 ..... 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<sup>4</sup>". According to the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 "Maintenance" includes provision for food, clothing, residence and medical attendance and treatment<sup>5</sup>.

### Provisions of Maintenance under Various Statutes and Persons entitled for Maintenance:

Section 24 of Hindu Marriage Act, 1955<sup>6</sup>: This section speaks about the "Maintenance *pendente lite* and expenses of proceedings". *Pendente* means pendency and *lite* means litigation. So, *maintenance pendente lite* means "maintenance during the pendency of litigation". Further, under this section the petitioner entitled to claim the expenses involved for the legal proceeding. This maintenance and expenses of the proceeding are available for both the husband and wife as the case may be and they can claim this maintenance and expenses of the proceeding on any proceedings under this Act. That is to say for proceeding initiated under Sections 9,10,11,12 and Section 13. Because the opening part of this section says that "**Where in any proceeding under this Act.....**". The word "proceedings" used in Section 24 is a word of wide import and cannot be said to have a restricted meaning. The term "proceedings" in Section 24 is not confined only to substantive proceedings like restitution of conjugal rights, judicial separation, annulment of marriage and divorce proceedings. An application under Section 24 of the Act has been held to be maintainable even in proceedings under Section 25 thereof for permanent alimony and maintenance. It is also maintainable in execution proceedings<sup>7</sup>.

<sup>1</sup> Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956.

<sup>2</sup> Code of Criminal Procedure, 1973 Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

<sup>3</sup> See Section 3 (b).

<sup>4</sup> See Section 125 (1) of Cr.P.C,1973.

<sup>5</sup> Section 2(b).

<sup>6</sup> Maintenance pendente lite and expenses of proceedings:—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:<sup>54</sup>[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.

<sup>7</sup> *Rishi Dev Anand vs Devinder Kaur on 28 September, 1984;AIR 1985 Delhi 40, 1985 (8) DRJ 30.*



Section 24 of the Act which provides for payment of maintenance pendente lite and expenses of proceedings, *does not in terms provide that the spouse who makes the application under that section would not be entitled to a relief under it if he or she is guilty of any misconduct or any marital offence (like that of Section 25)*. The section 24 of the Act, 1955 is enacted with the object of providing maintenance to the spouse during pendency of the proceedings, who is not otherwise able to maintain himself or herself and has to depend upon the other spouse for that purpose<sup>8</sup>. The only condition is that, to claim maintenance under this section the husband or the wife as the case may be should not have the “**independent income sufficient for her or his support and the necessary expenses of the proceeding**”. When the husband or the wife has separate means sufficient for their defense and subsistence, they should not be entitled for the relief available under this section. Further when the respondent whether husband or wife (against whom the proceeding under this section has been initiated) has neither property nor sufficient earning capacity, the court would not award any alimony. *No doubt, Section 24 entitles not only the wife but also the husband to claim maintenance pendente lite on showing that he has no independent source of income*. However, **the husband will have to satisfy the court that either due to physical or mental disability he is handicapped to earn and support his livelihood**.

**In Kanchan v. Kamalendra**, the court held that “since the husband was able-bodied and was not mentally ill and only because his business had closed down, he could not be granted any maintenance, it being opposed to spirit of section 24 of the Act”<sup>9</sup>. Provisions of Section 24 can be invoked by a spouse even during the pendency of an application under Order 9, Rule 4 of the Code of Civil Procedure.. The expression proceedings under the Act” appearing in section 24 cannot be given a narrow and restrictive meaning<sup>10</sup>. During the pendency of the divorce proceedings at any point of time if the wife establishes that she has no sufficient independent income for her support, it is open to her to claim maintenance pendente lite<sup>11</sup>. While dealing with the application under S. 24 of the Hindu Marriage Act, it would not be permissible to refuse to grant relief on the ground that there were allegations of matrimonial offence against the wife. Refusing to grant relief to the wife under S. 24 of the Hindu Marriage Act, on the ground that there were allegations against her in the main petition attributing a matrimonial offence to her, would be prejudging the issue and would not be in conformity with the objects of S. 24 of the Act<sup>12</sup>. An application under Section 24 of the Act is also maintainable in proceedings for restoration of an application under Section 25 of the Act. The question of “**maintenance pendente lite and expenses of proceedings**” arises only when the application filed and pending for any matrimonial relief available under this Act, 1955. After the termination of the proceeding, this relief comes to an end. If any application filed for claiming any relief provided in this section that application has to be disposed of within a period of sixty days from the date of service of notice on the concerned party.

#### **Whether children are entitled to claim maintenance under Section 24 of the Act, 1955<sup>13</sup>?**

A plain reading of Section 24 shows that a claim for maintenance pendente lite and litigation expenses can be filed either by the wife or by the husband against the other and by none else. The phrase in the opening sentence of Section 24 of the Act “either the wife or the husband” will reflect the same. Thus, at the first blush, it gives an impression that such a claim for maintenance pendente lite and litigation expenses can be made only by the wife or the husband for herself or himself, as the case may be, and not for the children.

#### **The Hon'ble Supreme Court in Jasbir Kaur Sehgal v. District Judge, Dehradun<sup>14</sup> answered the question as follows:**

“Section 24 of the Act no doubt talks of maintenance of wife during the pendency of the proceedings but this section cannot be read in isolation and cannot be given restricted meaning to hold that it is the maintenance of the wife alone and no one else. Since wife is maintaining the eldest unmarried daughter, her right to claim maintenance would include her own maintenance and that of her daughter. This fact has to be kept in view while fixing the maintenance pendente lite for the wife. We are aware of the provisions of Section 26 of the Act providing for custody of minor children, their maintenance and education but that section operates in its own field”.

From the above, it is crystal clear that an order for maintenance pendente lite and litigation expenses can be made only in favour of the wife/husband as the case may be. But, while fixing the maintenance pendente lite for the wife/husband, the

<sup>8</sup> Gangu Pundlik Waghmare vs Pundlik Maroti Waghmare And Anr. on 27 March, 1979: Equivalent citations: AIR 1979 Bom 264. To know the object of this section see this judgment.

<sup>9</sup> AIR 1993 Bom 493.

<sup>10</sup> Vinod Kumar Kejriwal v. Usha Vinod Kejriwal, available at <http://indiankanoon.org/doc/771773/last visited on 12/09/2015>.

<sup>11</sup> Manokaran v. Devaki, AIR 2003 Mad 212.

<sup>12</sup> Gangu Pundlik Waghmare vs Pundlik Maroti Waghmare And Anr. on 27 March, 1979 available at <http://indiankanoon.org/doc/993459/last visited on 12/09/2015>.

<sup>13</sup> S.Sumathi vs R.Sharavanakumar Date of Judgment 30<sup>th</sup> April, 2013 available at <http://indiankanoon.org/doc/26407098/last visited on 19/09/2015>.

<sup>14</sup> AIR 1997 SC 3397.



Court is required to keep in view the fact that there is a child who also needs the support of the wife or husband, as the case may be. Thus, a petition under Section 24 of the Act, can be filed by the wife/husband claiming maintenance pendente lite and in order to arrive at a just amount, she/he can plead that she/he has got a child also to maintain. In such a petition filed under Section 24 of the Act, except the wife or the husband, as the case may be, none else can be the petitioner/claimant.

### **Section 25 of the Hindu Marriage Act, 1955<sup>15</sup>:**

Section 25 of this Act deals with directions being given by the Court for payment of alimony and maintenance at the time of passing a decree under this Act. When a request is made for payment of alimony and maintenance under Section 25(1), the court has to take into account, apart from other matters, "the conduct of the parties". Sub-section (2) provides that the Court may vary, modify or rescind any order already passed under Sub-section (1) on being satisfied that there is a change in the circumstances of either party at any time after the order was passed under Sub-section (1).

But there is another special provision contained in Sub-section (3) making it obligatory on the Court to completely cancel an order passed under Sub-section (1), under the three circumstances mentioned in that sub-section . Those circumstances are:--

- I. The party in whose favour maintenance is awarded has remarried;
- II. If such a party is the wife, that she had not remained chaste; and
- III. If such party is the husband, that he had sexual intercourse with any woman outside wedlock.

Thus, under Section 25 (3), if the wife, who is the recipient of maintenance, has not remained chaste after the order has been passed (That is, even after a decree for judicial separation or divorce has been passed, if subsequent to the date of fixing the alimony under Sub-section (1) of Section 25) if the wife does not lead a chaste life, the penalty, is the cancellation of the order of maintenance passed by the Court. Absolute power and jurisdiction is given to a Court to cancel an order for maintenance, if the wife becomes unchaste after the passing of the order. Unchastity of the wife, if it had been established, will certainly be a very vital and crucial circumstance to be taken into account as "the conduct of the parties", when the Court is called upon, under Section 25(1) to exercise jurisdiction, for the grant of alimony or maintenance. The "conduct of the parties", referred to in Section 25(1) must necessarily refer to the conduct of the parties during the matrimonial life.

### **When a divorce has been granted on the ground of wife living in adultery is she entitled to claim maintenance under Section 25 (1)<sup>16</sup>?**

If the wife was found guilty of the act referred to in Section 13 (1) (i) that means she was not chaste even at the time she makes a claim under Section 25 (1), There is no question of such a wife "not remaining chaste" after the date of an order under Section 25 (1), because she is already unchaste. If she was already unchaste, there is no question of her becoming unchaste for a second time for the purpose of Section 25 (3). Therefore the wife was not entitled to make any claim for permanent alimony and maintenance under Section 25 (1) of the Act. Chaste is a condition precedent to claim maintenance under this Section.

Section 25 of the Act nowhere lay down that the interim maintenance cannot be granted during the pendency of the application for permanent alimony. An application for interim maintenance during the pendency of the application for permanent alimony Under Section 25 of the Act till its decision is maintainable. Expression 'any proceedings under this Act' appearing in Section 24 covers the proceedings under Section 25 thereof.

### **Maintenance under Section 18<sup>17</sup> of Hindu Adoption and Maintenance Act, 1956<sup>18</sup>:** Under this Section, only the Hindu wife alone is entitled to be maintained by her husband during her life time. It is immaterial whether the marriage was

<sup>15</sup> Permanent alimony and maintenance.—

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant[, the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

<sup>16</sup> Raja Gopalan vs Rajamma on 30 June, 1966

<sup>17</sup> Maintenance of wife



performed before or after the commencement of this Act<sup>19</sup>. Further under this section she is entitled to live separately from her partner/spouse without forfeiting the right to maintenance, if the husband is guilty of any of the grounds mentioned in Sub-Section (2) of Section 18. But, she is not entitled to “separate residence and maintenance” from her husband *if she is unchaste or converted to some other religion* from Hindu.

#### **Comparative analysis of Section 25 of Act, 1955 and Section 18 of 1956 Act:**

Under both sections, to claim maintenance, the wife must be “remained chaste”. Under section 25 of Act, 1955 husband to claim maintenance from his wife must not have sexual inter course with any other women outside the wed lock.

#### **Whether Section 18 of Hindu Adoption and Maintenance Act, 1956, are applicable for a woman whose marriage has been dissolved under Section 13 of Hindu Marriage Act, 1955?**

Under the Hindu Adoption and Maintenance Act, 1956 the term “wife” has not been defined. Hence, there is a contradictory opinion among the High Court regarding whether the term “wife” used in section 18 includes divorced wife as stated in Explanation (b) to Section 125 of Cr.P.C. The examples are:

In *Vihalal Mangaldas Patel vs Maiben Vihalal Patel*<sup>20</sup>, the Gujarat High Court Held that Section 18 of the Hindu Adoptions and Maintenance Act when it provides for maintenance for wife it includes a divorced wife. But in *Panditrao Chimaji Kalure vs Gayabai Panditrao Kalure*<sup>21</sup>, the Bombay High Court held that “Once a wife is divorced, her remedy to seek maintenance is at the time of divorce in a matrimonial petition or subsequent thereto is only under Hindu Marriage Act, 1955 and she cannot have any recourse under Hindu Adoptions and Maintenance Act, 1956, inasmuch as, the precondition for application of Hindu Adoptions and Maintenance Act, 1956, for a wife to seek maintenance is that the marriage must be subsisting.

#### **Maintenance under Section 125 of Code of Criminal Procedure (Cr.P.C):**

According to Section 125 of Cr.P.C, If any person having sufficient means neglects or refuses to maintain his wife, unable to maintain herself, or his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or 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 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 ..... Further, the Proviso clause says that that the Magistrate may order the father of a minor female child referred to in clause (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. The Explanation to (b) for the purposes of this Chapter (Chapter IX Sections 125 to 128) clearly states that “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried. From this explanation it is categorically clear that to claim maintenance under this Chapter she should be legally wedded wife and the term “wife” not only includes the woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried but also a wife whose marriage is subsisting but for a valid reasons separated from the matrimonial home<sup>22</sup>.

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(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

<sup>19</sup> This Act came into force on December 21<sup>st</sup>, 1956.

<sup>20</sup> Available at <http://indiankanoon.org/doc/1118628/> Date of Judgment 31 March, 1994: Equivalent citations: AIR 1995 Guj 88, I (1996) DMC 432, (1995) 1 GLR 532.

<sup>21</sup> Date of Judgment: 27<sup>th</sup> February 2001 available at <http://indiankanoon.org/doc/1616455/>lasted visited on 19/09/2015.

<sup>22</sup> Example: when the order for Restitution of Conjugal Rights and Judicial Separation passed under Sections 9 and 10 respectively.





**Now, the question is whether a woman, whose marriage declared, by a competent court of law, as null and void under section 11 of the Hindu Marriage Act, 1955 would come under the purview of the term “wife”? And entitled for maintenance under section 125 of Cr.P.C?**

Liability under Section 125 is only on the husband to maintain his wife. The liability is not on "the spouse" having sufficient means to maintain the other spouse unable to maintain himself/herself. Only the man and not the woman can be made liable under Section 125 to maintain his spouse. It is relevant to note that though the legislature had cautiously included legitimate as well as illegitimate children within the sweep of Clauses (b) and(c) of Section 125, the legislature did not choose to include the illegitimate, non-formal or de facto wives within the sweep of Section 125 by specific employment of words. The expression "wife" used in Section 125 was intended to refer to legitimate/legal wives. This indisputably is the interpretation of the Supreme Court in a series of decisions. The word 'wife' is not defined in Cr.P.C except indicating in the Explanation to Section 125 its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of law preceding that status. The expression must therefore be given the meaning in which it is understood in law applicable to the parties. The marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is not entitled to the benefit of s. 125 of the Code<sup>23</sup>.

In *K.Vimala vs K.Veerawamy*<sup>24</sup>, Justice M Fathima Beevi of The Hon'ble Apex Court held that “The woman not having the legal status of a wife is brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law a second wife whose marriage is void an account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance under the provision of Section 125 of Cr.P.C<sup>25</sup>.”

From the above decisions it is categorically clear that the woman/wife whose marriage is or has been declared to be null and void under Section 11 of the Hindu Marriage Act will not be a wife and would consequently not be entitled for maintenance under Section 125 Cr.P.C.

**1. Whether a man and a woman living together as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125 Cr.P.C?.**

**2. Whether a marriage performed according to customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125 Cr.P.C.?.**

The answer to the above questions is subject to the outcome of the decision in *Chanmuniya Vs. Virnedra Kumar Singh Gushawa & Anr*<sup>26</sup>. But, with respect to the second question, the state of Tamilnadu and Puducherry has amended the Hindu Marriage Act, 1955 and inserted Section 7-A respecting self respect marriage/suyamariyatai thirumanam<sup>27</sup>. Hence, if the marriage is performed without observing the ceremonies mentioned in Section 7(1) of the Act, 1955 the marriage, in so as the state of Tamilnadu and Puducherry is concerned, the marriage would be valid and thus the woman is entitled to maintenance under Section 125 of Cr.P.C, 1973.

**Whether a woman whose marriage annulled by a decree of nullity on any of the grounds mentioned under section 12 of the Hindu Marriage Act, 1955 would come under the purview of the term “wife”? And entitled for maintenance under section 125 of Cr.P.C?**

This question is answered by the Kerala High Court in *T.K Surendran Vs P.Najima Bindu*. In this case the Hon'ble High Court answered that “The wife under explanation (b) to Section 125 of Cr.P.C must include any women whose marriage has been brought to severance by acts of spouses including a decree passed by a court at their instances under Section 12 or 13 of the Act, 1955. The accent is that such wife in a terminated marriage unilaterally or by intervention of the court must remain unmarried to claim inclusion within the ambit of deemed wife under explanation (b)”. The court further stated that “the realistic acceptance of the fact is that the wife in an annulled marriage cannot in fact be placed by law to her position of maidenhood/spinstership prior to the marriage demands and warrants such an wider interpretation of the expression “wife” in

<sup>23</sup> *Smt. Yamunabai Anantrao Adhav A vs Ranantrao Shivram Adhav And ... on 27 January, 1988*

Equivalent citations: 1988 AIR 644, 1988 SCR (2) 809.

<sup>24</sup> Equivalent citations: 1991 SCR (1) 904, 1991 SCC (2) 375.

<sup>25</sup> The same decision has been accepted by the Hon'ble Apex Court in *Savitaben Somabhai Bhatiya vs State Of Gujarat And Ors on 10 March, 2005*.

<sup>26</sup> Date of Judgment 7 October, 2010: Bench: G.S. Singhvi, Asok Kumar Ganguly.

<sup>27</sup> The Tamil Nadu government under the Chief Ministership of the then great rationalist leader Arignar Anna enacted "the Hindu Marriages (Madras Amendment) Act, 1967 and the same incorporated as section 7-A in the Hindu Marriage Act - i.e. in Central Act XXV of 1955.



explanation (b). The fact that consequence of an annulment are not declared in the Hindu Marriage Act specifically and the fact that for the purpose of Section 15, 16 and 25, the law realistically accepts that such marriage cannot be ignored, overlooked or forgotten and has to be equated to a marriage dissolved under section 13 of the Act, 1955. As such Section 12 of the Act, 1955 need wider meaning for the expression “wife” in explanation (b). Finally the Court concluded that the “wife” in an annulled marriage falls within the definition of “wife” in explanation (b)<sup>28</sup>. Against this order, revision petition filed but dismissed observing that though the effect of both sections 11 and 12 are the same, but legal consequences may not be the same<sup>29</sup>.

About the claim of a woman whose marriage has been dissolved by a decree for divorce under Section 13 of the Hindu Marriage Act, there is no dispute. She will certainly be included within the sweep of Explanation (b) to Section 125(1) Cr.P.C.

### **Comparative Analysis of Section 125 of Cr.P.C and Section 18 of 1956 Act:**

#### **Whether a Hindu woman can simultaneously claim maintenance under both sections of Cr.P.C and 1956 Act?**

In *Kudupudi Lakshmi Veera ... vs Kudipudi Sri Krishna Vara Prasad*<sup>30</sup>, the Andhra Pradesh High Court held that Section 18 of the Hindu Adoption and Maintenance Act also contemplates that a wife would be entitled to maintenance if the husband is wilfully neglecting her or if he is guilty of desertion in terms of Clause 2(a). From a reading of the two sections, it follows that both under Section 125 Cr.PC and under Section 18 of the Hindu Adoption and Maintenance Act, if a husband neglects a wife without any reasonable cause the wife would be entitled to maintenance. The object of both the sections is to provide maintenance to a neglected wife. The scope of Section 18 of the Hindu Adoption and Maintenance Act is wider than Section 125 Cr.PC. But Section 125 Cr.PC is provided as a speedier remedy than the remedy under Section 18 of the Hindu Adoption and Maintenance Act. Moreover, Section 127(2) Cr.PC provides that if it appears to the Magistrate that in consequence of any decision of a competent Civil Court, any order made under Section 125 should be cancelled or varied, he may cancel or vary the same accordingly. Apart from these minor differences, the object of both the sections is same. In substance, the wife can claim maintenance under both Section 125 Cr.PC as well as Section 18 of the Hindu Adoption and Maintenance Act from her husband subject to fulfillment of other conditions stipulated in the respective sections. Further the court held that “once a decree for maintenance is obtained, the same would be final, unless it is modified by the competent Court”.

In *Bipta Devi V Chander and Banshidhar Mohanthy Vs Smt. Jyoshnarani Mohanty*, The courts held that once the respondent wife is given maintenance under the provisions of 1956 Act, she is not legally entitled to claim for maintenance under section 125 of Cr.P.C<sup>31</sup>.

### **SUGGESTIONS AND CONCLUSION**

1. In view of the fact that secular marriages devoid of any religious formality of the presence of a priest or invocation of "god" or the observance of any rituals are becoming common among all self respected people in the country, amendment in Section 7 to the Hindu Marriages Act 1955 by a special provision regarding Self-respect and Secular marriages has to be effected.
2. The object of maintenance is to arrest destitution and prostitution from the society. A divorced wife though legally separated from the husband is bound to be “chaste” woman. If it is removed from section 18 of the Act, 1956 the very purpose of the maintenance i.e., prostitution and destitution would be defeated.

Apart from that, no husband will agree for providing maintenance for an “unchaste” woman. If she wants to satisfy her biological urge of sexual desire, she can marry for the second time after the divorce. There is no legal impediment for this. Because, she cannot have the cake and eat the cake simultaneously. The long cherished culture established in India also promotes “chastity” as a high moral value, cutting across the barriers of the religion. So the recommendation made by the National Commission for Women in India to delete the word “is unchaste or” from Section 18 (3) of the Act, 1956 has no reasonable ground<sup>32</sup>.

3. In Section 18 of the 1956 Act the term “wife” has not been defined. But, in Explanation (b) to Section 125 of Cr.P.C has given a vivid and wide explanation to the term “wife”. As such, the courts are find it difficult to provide as to

<sup>28</sup> For detailed reasons see: *T.K Surendran Vs P.Najima Bindu W.P.(C) No. 36823 of 2008(2012) 234 KLR 686 : 2012 (1) KLT 769 : 2012 (2) KLJ 162.*

<sup>29</sup> See: <http://indiankanoon.org/doc/130267157/> last visited on 31/10/2015. RPF.No. 2 of 2014, IN THE HIGH COURT OF KERALA AT ERNAKULAM.

<sup>30</sup> Date of Judgment 24 November, 1998. Available at <http://indiankanoon.org/doc/1460266/>Last visited on 02/11/2015.

<sup>31</sup> *Family Law in India, Prof.G.C.V Subba Rao, Tenth Edi., updated Re print., S. Gogia & Co., Hyderabad, P. 395.*

<sup>32</sup> See: <http://ncw.nic.in/frmReportLaws17.aspx>. Last visited on 28/10/2015.



provide or not to provide maintenance by invoking section 18 of 1956 Act. It is erroneous to say that “a wife to seek maintenance under the Act of 1956 that the marriage must be in existence. Though the term “wife” has not been explained under section 18, she will not lose her right of claiming maintenance. Because, our Courts and Laws are now a days moving towards providing more protection to the rights of the women and always lean in favour of the women. Especially, those who are affected by the dissolution of marriage. Hence, the better interpretation in this regard should be the combined reading of section 18 of 1956 Act along with Explanation (b) to Section 125 of Cr.P.C, so as to construe the meaning of the term “wife”.

4. The decision in “*Panditrao Chimaji Kalure Vs Gayabai Panditrao Kalure*”(Supra) that divorced wife cannot claim any maintenance under the Act of 1956 and her only remedy is under the Act of 1955 is untenable and is to be done away. Because, when an option is given in two Laws to avail the remedy, it is the women to exercise her option either to choose Section 25 of Act, 1955 or Section 18 of Act, 1956 or Section 125 of Code.

Further, to avoid such confusion, it is suggested that a single provision may be kept for providing for maintenance for the Hindu women. This would very much ease the task of the court and to provide quick and speedy justice to the needy women folk.