

*Obligation to Supply
Necessaity to Children*

- Obligation = **responsibility** , Compulsion, Duty
- Basic necessities of life =
- **Food + Shelter+ Clothing + Medical care**

Basic necessities of a child

- Food
- Cloth
- Medical care
- Shelter

Responsibility to provide basic needs for children

- **Parent** has the **duty to provide** his or her children with **basic necessities** of life.
- Parents also have the responsibility to provide
- Necessary **medical care** for children.
- **If** parents **refuse** life- saving medical treatment for their children the **State** may **intervene (mediate)** **against** the parents wishes, even if they made their decision on religious grounds.
- Parents must also sure that their children meet **school attendance** requirements.

Other Responsibilities of Parents

- 1. **Disciplining** the child
- 2. Determining the **religion** of child
- 3. **Naming** the child
- 4. Appointing a **guardian** for child, if necessary
- 5. Allowing **confidential information** about the child to be disclosed.

Criminal Procedure Code, 1973

- S. 125
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 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, **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**.

- **Provided further** that the Magistrate may, **during the pendency of the proceeding** regarding monthly allowance for the maintenance under this Sub-Section, order such person to **make a monthly allowance** for the **interim maintenance** 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
- **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 sixty days** from the date of the service of notice of the application to such person.”

- Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable-
 1. From the **date of the order**,
 2. From the **date of the application** for maintenance
 3. **Interim maintenance** and expenses of proceeding,
 - 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 port of each **month's allowance** for the maintenance or the **interim maintenance and expenses of proceeding**, as the case may be remaining unpaid after the execution of the warrant, to **imprisonment** for a term which may extend 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: **Provided further** that if such person offers to maintain 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 may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

- **Explanation** – If a **husband** has
- **contracted marriage with another woman or keeps a mistress**, it shall be considered to be just ground for his wife's refusal to live with him.
- 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
- **On proof** that any **wife** in whose favour an 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 consent**, the Magistrate shall cancel the order.

The Hindu Adoptions and Maintenance Act, 1956

- **S. 20 Maintenance of children and aged parents-**
- A Hindu is bound, during his or her lifetime, to maintain his or her legitimate children and his or her aged or infirm parents .
- A legitimate or illegitimate child may claim maintenance from his or he father or mother so long as the child is a minor.
- **No Wife** shall be entitled to receive an allowance 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 consent.
- On proof that any wife in whose favour an 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 consent, the Magistrate shall cancel the order

Procedure

- (1) Proceedings 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 the 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 summons-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 **willfully avoiding** service, or
- **willfully neglecting** to attend the Court,
- the Magistrate **may proceed** to hear and determine the case **ex parte** 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

Alteration in allowance

- (1) On proof of a **change in the circumstances** of any person, receiving, under section 125 a monthly allowance, or
- ordered under the same section to pay a monthly allowance to his wife, child, father of mother, as the case may be,
- the Magistrate may make such alteration in the allowance as he thinks fit:

The Magistrate shall, if he is satisfied that

- the woman has, after the date of such divorce, **remarried**, cancel such order as from the date of her remarriage;
- the woman has been divorced by her husband and that she has **received**, whether before or after the date of the said order, the whole of the **sum** which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order

In the case where such sum was paid
before such order

from the date on which such order was made, (ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance after her divorce, cancel the order from the date thereof

Enforcement of order of maintenance

- A **copy** of the order of maintenance 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 is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made.

Nanak Chand v. Chandra Kishore

- The Supreme Court had pointed out that emphasis is always on the inability of the child to maintain himself (the judiciary was highlighting the spirit behind as prior to the amendment there was no specific mention about major children unable to maintain themselves)