

Bill No. 259 of 2022

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) BILL,
2022

By

SHRI SRINIVAS KESINENI, M.P.

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BILL

to further amend the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2022.

Short title and
commencement.

(2) It shall come into force with immediate effect.

2 of 1974. 5

2. In the Code of Criminal Procedure, 1973, in section 125, after clause (2), the following clauses shall be inserted, namely:—

Amendment of
Section 125.

25 of 1955.

78 of 1956.

25 of 1986.

4 of 1869.

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“(2A) Notwithstanding anything contained in sections 24 and 25 of the Hindu Marriage Act, 1955, section 19 of the Hindu Adoptions and Maintenance Act, 1956, The Muslim Women (Protection of Rights on Divorce) Act, 1986, the Indian Divorce Act, 1869:—

(a) the Magistrate may award a lump sum amount for the maintenance as a one-time settlement in an order after due verification of the assets held by the

husband, including the ascertainment of any immovable or movable property possessed by the husband;

(b) in case the award is in the form of a monthly allowance, the order shall be duly notified to the employer of the person liable to pay the monthly allowance if the person is employed and the employers shall be directed to deduct from the salary of such person a sum equivalent to the amount of maintenance ordered by the court;

Explanation.— The employer shall include Government entities under article 12 of the Constitution and the private entities.

(c) the retirement funds of the husband working in an organisation to which the preceding clause applies shall be used for the purposes of fulfilling the maintenance award and the employer after receipt of the order under sub-section (2) shall deposit in court the details regarding the retirement funds of the employee in question; and

(d) any property, whether movable or immovable, built, bought, or constructed during the course of marriage shall be equally divided between the two parties to the divorce.

(2B) Notwithstanding anything contained in sub-section (1), an aggrieved woman living in a shared household shall be entitled to interim maintenance without proof of marriage.

Explanation.— For the purposes of this sub-section,—

(a) “aggrieved woman” and “shared household” shall have the same meaning as assigned to them in the Protection of Women from Domestic Violence Act, 2005; and

(b) “interim maintenance” shall be calculated for the aggrieved woman and the minor children, if any with the help of maintenance professionals appointed on a contractual basis by the court from a pool of eligible professionals, experts in family law and finance in accordance with cost of living index:

Provided that if the applicant has moved a petition to seek maintenance under different laws, the same information shall be communicated by the applicant to the relevant courts through an affidavit, within thirty days of the institution of the petition:

Provided further that the Court shall adjust or setoff the amount awarded in the previous proceedings, while determining whether any further amount is to be awarded in the subsequent proceeding:

Provided also that the order passed in the previous proceedings requires any modification or variation, such modification or variation shall be made in the same proceeding.”.

STATEMENT OF OBJECTS AND REASONS

The Constitution makers had incorporated Directive Principles of State Policy (DPSP) with the vision to guide the law-making process in the country. Dr. B.R Ambedkar went on to state that the DPSP are the heart and soul of the Constitution. Article 39 states that “the state shall, in particular, direct its policies towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood, that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

Further Article 39 reinforces Article 15(3) of the Constitution of India which provides that: “Nothing in this article shall prevent the State from making any special provision for women and children.” Together the two Articles uphold the rights and subsequent duties of the state towards the vulnerable sections of the society.

Presently, a women can claim maintenance under various laws ranging from Section 125 of the Criminal Procedure Code (CrPC) and various sections of different personal laws. It is an established and widely acknowledged fact that economic prosperity and women empowerment go hand-in-hand. Moreover, a nation’s progress is judged as per its ability to enforce contracts. However, seven decades since independence, the women of our country still run from pillar to post to seek enforcement of their maintenance contracts.

Across the globe, developed countries have formulated stringent guidelines to ensure the enforcement of maintenance contracts. For instance, in Australia, the contracts are registered with the child support register and the amount is automatically deducted from the income tax installment of the payer. Further in Finland, the maintenance amount is revised every year depending on the shift in the cost-of-living index. In India, this can be adopted in relation to a purchasing index in consonance with the trend of inflation. Therefore, ensuring that the maintenance contracts are enforced and ensure a sustainable amount to the aggrieved women.

By virtue of judicial pronouncements and other steps, rights of women have been restored but it will become fruitful only when under lying thinking is changed and only if maintenance orders are properly enforced. It is imperative that the laws are framed to ensure the effective enforcement of the contracts, reduce burden of pending cases and ensure smooth procedure. Only when women, who are the first teachers of a child, get their due, the nation can realise the dream envisioned by the constitution makers, of a just and equitable society.

Hence this Bill.

NEW DELHI;
November 21, 2022

SRINIVAS KESINENI

ANNEXURE

EXTRACTS FROM THE CODE OF CRIMINAL PROCEDURE, 1973

(ACT No. 2 OF 1974)

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Order for
maintenance of
wives, children
and parents.

125. (1) 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, 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 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 sixty 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 to have attained his majority;

(b) “wife” includes a woman 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 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.

(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 consent.

(5) 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.

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BILL

to further amend the Code of Criminal Procedure, 1973.

(Shri Srinivas Kesineni, M.P.)