



No. 1/(21)/2008/RTI/NCW

To,

Ms.Preeti Chauhan  
A-GF-1, A.T.S.GREENS-1  
Sector-50r  
Noida-201307

**Subject:- Application under Right to Information Act, 2005-regarding.**

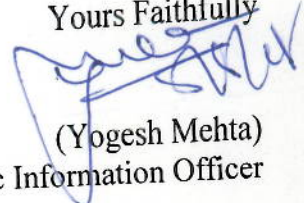
Madam,

Please refer to your application dated 9<sup>th</sup> July, 2008 seeking certain information under the Right to Information Act, 2005.

In this connection, point-wise information in respect of the National Commission for Women is given below:-

1. NCW does not have any record which shows that in 70% of maintenance cases under CrPC-125, adultery has been alleged and proven misused by the respondents.
2. The National Commission for Women in accordance with its mandate to review the Laws, conducted an in-house study on review of the section 125 of the Criminal Procedure Code which provides for maintenance. The amendment to section 125 also includes such women lured unwittingly in to marriage i.e. "wife or any woman living with such person in a relationship in the nature of marriage unable to maintain herself." A copy of the report is enclosed.
3. NCW does not have any record pertaining to the cases of live- in relationship.
4. The Commission does not maintain such data on divorce and maintenance and also on live- in relationship.

Yours Faithfully

  
(Yogesh Mehta)  
Public Information Officer

Encl: As above

भारत सरकार  
GOVERNMENT OF INDIA  
राष्ट्रीय महिला आयोग  
NATIONAL COMMISSION FOR WOMEN  
4, DEEN DAYAL UPADHYAYA MARG  
नई दिल्ली-110 002  
NEW DELHI-110 002  
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Dated 24.07.2008

पंजीकृत



1/8/6

**Section 125 Of Code of Criminal  
Procedure: order for maintenance  
of wives, children and parents**

**Need For A Review**

By  
The National Commission for Women

## 1. ISSUE OF JURISDICTION

### Brief facts of the case

The commission had received a petition from T Kusuma Kumari, aged 64 years, resident of Ameerpeet Hyderabad, seeking the commissions intervention on grounds that the petitioner being aged and without sufficient means, was being forced to petition the appropriate court at a place located very far away from where she resided in order to claim maintenance from her son.

The additional family court at Hyderabad in Case No 198/2004, Smt T kusuma Kumari Vs. T Venugopal, observed that the petitioner smt T Kusuma Kumari, was residing at Hyderabad and her son was working in Nagpur and accordingly stated that the *"exemption given to wife is not extended to parents under sec125 Crpc and therefore the petitioner has to file the petition where her son resides and the court at Hyderabad had no jurisdiction to try the petition."*

In another case, **Santi Seetharamayya and Another v. Santi Yegna Narayan Murthy and another** 1998 (2) ALT (Cri) 510 (F.B) (A.P), the Andhra Pradesh High Court observed that

"Time has yet to come in India, where old parents should be shoved off to infirmities. It appears that, considering the problems of old and infirm parents, who have no money to maintain themselves in old age, the legislature have given them the right to claim maintenance from their earning children if the parents are unable to maintain themselves.

There is no denying the fact that a poor mother or father, who is ailing and infirm, in her or his old age is unable to take a long journey without the aid of an escort and that too without sufficient money. Therefore, there ***appears to be no earthly reason as to why the benefit given to wives should not be provided to old parents and eligible children.***

***If the Legislature does not consider it fit to enlarge the benefit under Section 126 of the Code of Criminal Procedure, as it has done in the case of wife, to initiate the proceedings at the place where they reside, it would be rather impossible for them to ever get any amount of maintenance and their right to claim maintenance would remain as a dead letter in the statutory book.*** Right to claim maintenance has been given to them as a piece of social legislation. In order to prevent starvation and vagrancy as also to prevent them from forced living in infirmaries

The legislature in its wisdom *should make suitable amendments in section 126 (1)(b) of the code of Criminal Procedure*, by adding word "or where his parents or children resides" after the word "or", to enable parents and eligible children, legitimate or illegitimate, to initiate proceedings under section 125 of the Code of Criminal Procedure in the place where they reside.

**In Vijay Kumar Prasad V. State of Bihar, (2004) 5 SCC 196**, the father who was residing at Siwan filed the application for claim of maintenance under Section 125. the appellant (son) filed an application for transfer of the case from Siwan to Patna stating that the Court of Siwan had no jurisdiction to entertain the application because the appellant (son) lives and is practicing as a lawyer in Patna.

It was observed by the Supreme Court that **the benefit given to the wife and the children to initiate proceeding at the place where they**

**reside is not given to the parents.** A bare reading of the Section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the children for the purpose of Section 126 of the Code. As noted by in several cases, proceedings under Section 125 of the Code are of civil nature. Unlike clauses (b) and (c) of Section 126(1) an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives. The stand of the appellant is that he practices in Patna and was not present in Siwan physically when the application was filed for maintenance and the Court at Siwan has no jurisdiction to deal with the petition.

In **Ananth Gopal Pai v. Gopal Narayan Pai, 1985 Cri.L.J 152 Karnataka High Court**, the court took a contrary view. The father, Gopal Narayan Pai residing in Kumpa Town filed an application for maintenance against his son Ananth Gopal Pai, who was residing in Bangalore under section 125 of the Code of Criminal Procedure in the court of the J.M.F.C, Kurata. Section 126 has in its view only the husband and the wife. The provision enable an application for maintenance to be filed in the district where he is or where he resides or in the district where he last resided with his wife or as the case may with the mother of the illegitimate child. In so far as the wife is concerned, the section says that she can file an application in any court of the district within which he resides. But, in so far as the father or the mother or the children are concerned, Section 126 is silent.

But it was observed by the Court that notwithstanding the silence of Section 126 regarding the place of application under section 125 by the father, the mother or the children of the person concerned, it must be held that they could also apply for maintenance at the place where

they reside and need not necessarily approach the court within whose local limits the person concerned resides. The above interpretation would be justified not only by its being beneficial in nature but also on an analogy of Section 177 and the provision under Section 128, Cr.P.C., enabling enforcement of the order against the person wherever he might be. Section 177 provides that every offence shall ordinarily be enquired into and tried by a court within whose jurisdiction it was committed. Cause of action for the father, mother or the children for the neglect to maintain them arises at the place where they reside.

#### Conclusion

1. ***Benefit under Section 126 of the Code of Criminal Procedure, as it extends in the case of wife, to initiate the proceedings at the place where she resides, should be extended to parents also***
2. ***if not then it would be rather impossible for them to ever get any amount of maintenance and their right to claim maintenance would remain as a dead letter in the statutory book.*** Right to claim maintenance has been given to them as a piece of social legislation. In order to prevent starvation and vagrancy as also to prevent them from forced living in infirmaries
3. **Suitable amendments in section 126 (1)(b) of the code of Criminal Procedure**, should be made by adding word "or where his parents or children resides" after the word "or", to enable parents and eligible children, legitimate or illegitimate, to initiate proceedings under section 125 of the Code of Criminal Procedure in the place where they reside.
4. Such amendment would be in tune with the older persons care and maintenance Bill, which is proposed to be enacted

## 2. Issue regarding - No Alimony for Live-ins

### Introduction

There are many instances, where a woman unwittingly enters into wedlock with a man or live together in a relationship like marriage and later deserted or shunned. In such cases the woman is left with little or no sustenance.

In a case before the Supreme Court, **Savitaben Somabhai Bhatiya v. State of Gujarat and others AIR 2005 SC 1809**, the appellant claimed that she was married to respondent No2 and they had a child from the wedlock. Later the appellant was subjected to mental and physical torture by him. The appellant came to know that the respondent No 2, had developed illicit relationship with a lady named veenaben and neglected the appellant. In her claim for maintenance under section 125 crpc, the respondent opposed the application stating that he was actually married to Veenaben and it was held that the records proved that Veenaben was a actually the lawfully married wife of the respondent No2 and not the appellant. On appeal before the supreme court , it was observed that the legislature considered including within the scope of Section125 an illegitimate child but it has not done so with respect to woman not lawfully married. Section 125 does not provide protection to such women who unwittingly get into relationships with a married man. This being an inadequacy in law and can be undone only by legislature

### Conclusion

In view of the recently enacted protection to women from domestic violence Act 2005 wherein domestic relationship has been defined broadly to include relationship in the nature of marriage, which would entitle women in such situations to efficacious remedy then there is no reason that provisions of sec 125 crpc should not be extended to them

### **Recommendations**

1. Amendment of Sec.126 Cr.PC

In Section 126 (1) of the Criminal Procedure Code a clause (d) be inserted as under

**(d) *Where the parents or children reside.***

This would enable parents and children to initiate proceedings under section 125 Cr.PC in the place where they reside

2. Amendment to Sec. 125 Cr.PC

The present clause may be widened to include women living in relationship in nature of marriage

- a) **Wife, unable to maintain herself or *any woman living with such person in a relationship in the nature of marriage unable to maintain herself***