**MAINTENANCE OF CHILDREN BY PARENTS**

Legal provisions regarding Procedure for Maintenance are mentioned under section 126 of the Code of Criminal Procedure, 1973. The proceedings under Section 125 are in the nature of civil proceedings, the remedy is a summarily one and the person seeking the remedy is ordinarily a helpless person. So the words in Section 126(1) should be liberally construed.

**(1) Application to Magistrate**

An application for maintenance under Section 125 of the Code may be filed in the court of first class Magistrate in any district

a. Where the father is, or

b. Where the father or his child resides, or

c. Where the father last resided with his wife, or as the case may be, with the mother of the illegitimate child.

No period of limitation has been prescribed for filing an application for maintenance.

**(2) Summons to the Respondent**

The magistrate will then summon the person against whom the maintenance is claimed in order for the father to make appearance and contest the claim of maintenance.

**(3) Evidence and Trial**

All evidence in such proceedings shall be taken in the presence of the father 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-case. However, if the Magistrate is satisfied that the father 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.

**(4) Interim Maintenance**

During the pendency of the suit the magistrate may order for payment of monthly allowance to the child and also the expenses of the proceedings which the magistrate considers to be reasonable

**(5) Order of maintenance**

After the trial, the magistrate on perusing the evidence and witnesses may make an order for the father to make a monthly allowance for the maintenance of his child at such a monthly rate as the magistrate seems to be necessary.

**(6) Modification of maintenance**

Sec. 127 empowers the Magistrate to alter or modify the order of the maintenance on of (i) a change in the circumstances of the party receiving the maintenance, or (ii) any decision of competent civil court. The party entitled to alteration of the order, can always move to the Magistrate whenever there is a change of circumstances.

**(7) Enforcement of maintenance**

Once an order of maintenance has been passed, the order will be provided to the child and this can be enforced by a magistrate in the place where the father against whom maintenance is claimed resides, failing which a warrant will be issued against him.

In Bakulabai v. Gangaram[[1]](#footnote-0), it was held by the Supreme Court that a child born out of a void marriage between a woman and a man who already has a wife is to be treated as a legitimate child who is entitled to maintenance under Section 125 CrPC.

In Jasbir Kaur Sehgal v. District Judge, Dehradun[[2]](#footnote-1) the Supreme Court held that an unmarried daughter unable to maintain herself is entitled to claim maintenance. The father is obliged to maintain her unmarried daughters even if they are living separately with their mother.

In Noor Saba Khatoon v. Mohd. Quasim[[3]](#footnote-2) the court held that the benefit under Section 125 CrPC is available to all children irrespective of religion. Right under Muslim Women (Protection of Rights on Divorce) Act, 1986 is that of the mother to claim maintenance for children for two years from their date of birth and is distinct and independent of the right to maintenance under CrPC to minor children unable to maintain themselves.

1. (1988) 1 SCC 537 [↑](#footnote-ref-0)
2. (1997) 7 SCC 7 [↑](#footnote-ref-1)
3. (1997) 6 SCC 233 [↑](#footnote-ref-2)