

Thirteenth Kerala Legislative Assembly
Bill No. 172

**THE CODE OF CRIMINAL PROCEDURE
(KERALA AMENDMENT) BILL, 2012**

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BILL

further to amend the Code of Criminal Procedure, 1973, in its application to the State of Kerala.

Preamble.—WHEREAS, it is expedient further to amend the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), in its application to the State of Kerala, for the purpose hereinafter appearing;

BE it enacted in the Sixty-third Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Code of Criminal Procedure (Kerala Amendment) Act, 2012.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Amendment of section 125.*—In the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), after sub-section (2) of section 125, the following sub-section shall be inserted, namely:—

“(2A) If any person, fails without sufficient cause, to pay such monthly allowance for the maintenance or the interim maintenance and the expenses for such proceedings ordered to be paid under this section, he shall be liable to pay an interest at the rate of twelve per cent on the amount so payable as monthly allowance for the maintenance or interim maintenance and the expenses of the proceedings.”.

STATEMENT OF OBJECTS AND REASONS

Sixth Report of the Committee for Welfare of Women, Children and Handicapped (1996-'98) of the Kerala Legislative Assembly recommended that a specific provision is to be made in the Code of Criminal Procedure for enabling courts to order interest and cost while ordering maintenance in appropriate cases. The Committee recommended that there shall be an enactment to realize double the amount of maintenance, if a person bound to pay maintenance fails to pay that amount within the specified time. The Committee also recommended

enhancing the maintenance amount in proportion to husband's income. Government have considered the recommendations and have decided to amend the Code of Criminal Procedure, 1973, by inserting a sub-section to section 125 of the Code of Criminal Procedure, 1973, for realizing twelve per cent interest on the defaulted amount of monthly allowance for the maintenance or interim maintenance including the expenses of the proceedings.

2. The Bill seeks to achieve the above object.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure out of the Consolidated Fund of the State.

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(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 for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for the 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, the Magistrate shall cancel the order.

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