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(2021) 2 SCC

(2021) 2 Supreme Court Cases 324

2J

(BEFORE INDU MALHOTRA AND R. SUBHASH REDDY, JJ.)

RAJNESH

.. Appellant;

Versus

NEHA AND ANOTHER

.. Respondents.

Criminal Appeal No. 730 of 2020[†], decided on November 4, 2020

A. Constitution of India — Preamble and Arts. 39, 15(3) and 142 — Maintenance to wife, children and parents — Overlapping statutes — Remedy of maintenance in both secular laws and personal laws — Objective and manner of interpretation — Held, there is a need for framing guidelines under Art. 142 of the Constitution laying down uniform and consistent standards and for ensuring timely disposal of applications seeking maintenance under all the applicable statutes — Directions issued accordingly (see Shortnotes B to I) — Rationale for, explained

— *Conflicting orders resulting from overlapping jurisdiction* — Simultaneous operation of statutes would lead to multiplicity of proceedings and conflicting orders — This process requires to be streamlined so that the respondent husband is not obligated to comply with successive orders of maintenance passed under different enactments

— *No inconsistency though different statutes have distinct objectives* — There is no inconsistency between CrPC and the Hindu Adoptions and Maintenance Act, 1956 (HAMA) and both can stand together — Though there are different enactments providing for maintenance, each enactment provides an independent and distinct remedy framed with a specific object and purpose — Provision of maintenance in secular laws like the Special Marriage Act, 1954 (SMA), S. 125 CrPC and the Protection of Women from Domestic Violence Act, 2005 (the DV Act), are irrespective of religious community to which they belong and apart from other remedies provided in personal laws like dissolution of marriage or restitution of conjugal rights, etc.

— *Constitutional objective* — Remedy of maintenance is a measure of social justice as envisaged under the Constitution to prevent wives and children from falling into destitution and vagrancy — Preamble and Arts. 39 and 15(3) of the Constitution envisage social justice and positive State action for the empowerment of women and children. (Paras 12 to 18, 37, 38, 4, 5 and 127)

Ramesh Chander Kaushal v. Veena Kaushal, (1978) 4 SCC 70 : 1978 SCC (Cri) 508; *Nanak Chand v. Chandra Kishore Aggarwal*, (1969) 3 SCC 802 : 1970 SCC (Cri) 127; *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356; *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200, *relied on*

Ram Singh v. State, 1962 SCC OnLine All 191 : AIR 1963 All 355; *Mahabir Agarwalla v. Gita Roy*, (1962) 2 Cri LJ 528 (Cal); *Nalini Ranjan Chakravarty v. Kiran Rani Chakravarty*, 1964 SCC OnLine Pat 160 : AIR 1965 Pat 442, *cited*

[†] Arising out of SLP (Crl.) No. 9503 of 2018. Arising from the Judgment and Order in *Rajnesh v. Neha*, 2018 SCC OnLine Bom 2181 [Bombay High Court, Nagpur Bench, WP (Crl.) No. 875 of 2015, dt. 14-8-2018]

B. Family and Personal Laws — Maintenance proceedings — Overlapping jurisdictions under various statutes — Rights and duties of litigants, and approach and duty of court while re-adjudicating and varying previous orders passed under different statutes — Clarified, and necessary directions issued

a — *Simultaneous proceedings and re-adjudication of issue of maintenance considering distinct scope of different statutes is permissible* —

b A wife can make a claim for maintenance under different statutes — There is no bar to seek maintenance both under the DV Act and S. 125 CrPC, or under HMA — The mere fact that two proceedings were initiated by a party, would not imply that one would have to be adjourned sine die — There is a distinction in the scope and power exercised by the Magistrate under S. 125 CrPC and the DV Act — An order passed in a maintenance proceedings would not debar re-adjudication of the issue of maintenance in any other proceeding

c — Proceedings under S. 125 CrPC are summary in nature, and are intended to provide a speedy remedy to the wife — Any order passed under S. 125 CrPC by compromise or otherwise would not foreclose the remedy under S. 18 of the HAMA — Maintenance granted to an aggrieved person under the DV Act, would be in addition to an order of maintenance under S. 125 CrPC, or under the HMA

d (Paras 50 to 61)

e — *Disclosure as to award of maintenance in any other proceeding mandatory* — If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment — For instance while granting relief under DV Act, the Magistrate has to consider if any similar relief has been obtained by aggrieved person — The applicant shall disclose the previous maintenance proceeding and the orders passed therein

(Paras 54 and 128.2)

f — *Modification or variation of previous order* — If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the court concerned in the previous proceeding — So, for instance once an order for permanent alimony under HMA is passed, same could be modified by the same court by exercising its power under S. 25(2) of the HMA and an application under S. 125 CrPC would be treated as an application under S. 25(2) of the HMA and be disposed of accordingly

(Paras 61, 57 and 128.3)

g — *Adjustment or set-off, permissible* — Though the wife can simultaneously claim maintenance under the different enactments, it would be inequitable to direct husband to pay the maintenance awarded in each of the said proceedings, independent of the relief granted in a previous proceeding — Adjustment is permissible and the adjustment can be allowed of the lower amount against the higher amount — The court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount

h (Paras 54, 60 and 128.1)

— *While deciding quantum of maintenance in subsequent proceeding, civil court/Family Court shall take into account maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant* — If Magistrate awards any further amount over and above the maintenance already awarded in other proceedings, he has to record reasons in writing for the same — Magistrate cannot ignore maintenance awarded in other legal proceedings — Hindu Adoptions and Maintenance Act, 1956 — S. 18 — Criminal Procedure Code, 1973, S. 125 (Paras 50 to 61, 128.2 and 128.3)

Held :

Issue of overlapping jurisdiction

The following directions are issued in exercise of powers under Article 142 of the Constitution: To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. It is directed that:

(i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.

(ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

(iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding. (Paras 50 to 61 and 128 to 128.3)

Chand Dhawan v. Jawaharlal Dhawan, (1993) 3 SCC 406; 1993 SCC (Cri) 915; *Rakesh Malhotra v. Krishna Malhotra*, 2020 SCC OnLine SC 239; *Nagendrappa Natikar v. Neelamma*, (2014) 14 SCC 452; (2015) 1 SCC (Civ) 346; (2015) 1 SCC (Cri) 407; *Sudeep Chaudhary v. Radha Chaudhary*, (1997) 11 SCC 286; 1998 SCC (Cri) 160, *relied on*

Panditrao Chimaji Kalure v. Gayabai Panditrao Kalure, 2001 SCC OnLine Bom 165; (2002) 2 Mah LJ 53; *Vishal v. Aparna*, 2018 SCC OnLine Bom 1207; *R.D. v. B.D.*, 2019 SCC OnLine Del 9526; *Tanushree v. A.S. Moorthy*, 2018 SCC OnLine Del 7074, *approved*

Ashok Singh Pal v. Manjulata, 2008 SCC OnLine MP 18; AIR 2008 MP 139; *Mohan Swaroop Chauhan v. Mohini*, 2015 SCC OnLine MP 7427; (2016) 2 MP LJ 179; *Sujit Adhikari v. Tulika Adhikari*, 2017 SCC OnLine Cal 15484; (2018) 2 CHN 129; *Chandra Mohan Das v. Tapati Das*, 2015 SCC OnLine Cal 9554, *overruled*

C. Family and Personal Laws — Maintenance proceedings under various statutes, including interim maintenance proceedings — Objective assessment and expeditious disposal of applications — Directions and clarifications issued with respect to manner in which responsible pleadings are to be made and particulars to be provided, including affidavits of disclosure of assets and liabilities as per Enclosures I, II and III appended with this judgment; availability of marriage counsellors; for expeditious disposal of the applications; and incidental and related issues

- **Streamlining the procedure of pleadings during interim maintenance is necessary** — Parties often submit scanty materials, incorrect details, suppress vital information and conceal actual income — Applications for maintenance remain pending for several years because of docket pressure, adjournments and enormous time taken for completion of pleadings at interim stage itself, etc.
- a
- **Marriage counsellors** — Given the large and growing percentage of matrimonial litigation, a professional Marriage Counsellor must be made available in every Family Court — If the endeavour for settlement of disputes is unsuccessful, the Family Court would proceed with the matter on merits.
- b
- **Concise application** — Application claiming maintenance must be a concise application accompanied with an affidavit of disclosure of assets as per annexed in Enclosures I, II and III of the judgment — The court in its discretion may issue necessary directions for modification of format of affidavit if exigencies require or more information is required.
- c
- **Affidavit of disclosure of assets and liabilities** — The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of the judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country — It must be filed to enable court to make an objective assessment of the quantum of interim maintenance — Such affidavit should be filed within a maximum period of four weeks — The courts may not grant more than two opportunities for submission of such affidavit.
- d
- **Reply-affidavit** — If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings — On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the affidavit filed by the applicant and the pleadings on record.
- e
- **Disputes with regard to affidavit** — Aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Or. 11 CPC — On filing of the affidavit, the court may invoke the provisions of Or. 10 CPC or S. 165 or S. 106 of the Evidence Act, 1872, if it considers it necessary to do so.
- f
- **Amended/supplementary affidavit** — If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.
- g
- **Responsible pleadings should be filed** — If false statements and misrepresentations are made, the court may consider initiation of proceeding under S. 340 CrPC, and for contempt of court.
- h

— **Exemption from filing affidavit** — In case the parties belong to the economically weaker sections (EWS), or are living below the poverty line (BPL), or are casual labourers, the requirement of filing the affidavit would be dispensed with

— **Reasoned order within six months of affidavit** — Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court — Evidence Act, 1872 — Ss. 165 and 106 — Civil Procedure Code, 1908 — S. 11 and Or. 10 — Criminal Procedure Code, 1973, S. 340 (Paras 62 to 72 and 129)

Held :

Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution:

(a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

(b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

(c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on basis of the affidavit filed by the applicant and the pleadings on record;

(d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

(e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

(f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not

a within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

(g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

b (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

c (i) In case the parties belong to the economically weaker sections (“EWS”), or are living below the poverty line (“BPL”), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

(j) The Family Court/District Court/Magistrate’s Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

d (k) A professional Marriage Counsellor must be made available in every Family Court. (Para 72)

The above directions are issued in exercise of powers under Article 142 of the Constitution: The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country. (Paras 62 to 72 and 129)

e *Kaushalya v. Mukesh Jain*, (2020) 17 SCC 822; 2019 SCC OnLine SC 1915, *relied on* *Puneet Kaur v. Inderjit Singh Sawhney*, 2011 SCC OnLine Del 3841; ILR (2012) 1 Del 73; *Kusum Sharma v. Mahinder Kumar Sharma*, 2014 SCC OnLine Del 7627; *Kusum Sharma v. Mahinder Kumar Sharma*, 2015 SCC OnLine Del 6793; *Kusum Sharma v. Mahinder Kumar Sharma*, 2017 SCC OnLine Del 11796; *Kusum Sharma v. Mahinder Kumar Sharma*, 2017 SCC OnLine Del 12534; *Kusum Sharma v. Mahinder Kumar Sharma*, 2020 SCC OnLine Del 931, *considered*

f *Rajnesh v. Neha*, 2019 SCC OnLine SC 1918, *referred to*

D. Family and Personal Laws — Determination of permanent alimony — Factors to be considered, including provision for adequate child support — Enumerated (non-exhaustively)

g — *Duration of marriage* — Duration of the marriage is a relevant factor for determining whether permanent alimony has to be paid or not — In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life

h — *Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc.* before the court concerned, for fixing the permanent alimony payable to the spouse

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— ***Marriage expenses of children*** — Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife — The expenses would be determined by taking into account the financial position of the husband and the customs of the family a

— ***Trust funds/investments*** — If there are any trust funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support (Paras 73 to 76) b

Held :

Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the court concerned, for fixing the permanent alimony payable to the spouse. (Para 73)

In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid. (Para 74) c

Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family. (Para 75) d

If there are any trust funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support. (Para 76)

E. Family and Personal Laws — Quantum of maintenance — Determination of — Factors and criteria, enumerated — Clarified that factors and criteria enumerated are not exhaustive and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case e

— ***Balance*** — *There is no straitjacket formula for fixing quantum of maintenance — A careful and just balance must be drawn between all relevant factors — The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury* — The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort — Sustenance does not mean, and cannot be allowed to mean mere survival — The object behind right to maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse — S. 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance (Paras 77 to 82, 90.1 and 130) f
g
h

- Financial status and reasonable needs of applicant — It is no answer to a claim of maintenance that the wife is educated and could support herself**
- a — The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support** — No doubt it is relevant as to whether the applicant is educated and professionally qualified and has independent source of income or not — But the court has to see whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home [S. 20(2) of the DV Act]
- b — The provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant are relevant factors for determining maintenance** (Paras 78 to 83)
- Age of parties and employability and reasons why wife sacrificed her employment opportunities, are relevant** — The court should find out whether the applicant was employed prior to her marriage and/or was working during the subsistence of the marriage or was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family — This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself —
- c — With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years** (Paras 86 and 79)
- Duration of marriage** — In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration (Para 86)
- Reasonable costs of litigation for a non-working wife should be considered by the court — The non-applicant has to defray the cost of litigation** (Paras 79 and 83)
- e — Financial status and liabilities of non-applicant and higher obligation of husband — The obligation of the husband to provide maintenance stands on a higher pedestal than the wife — If the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband —**
- f — Plea that the husband does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications — The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control — If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court** — The financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid — The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living (Paras 80 to 83 and 90 to 90.5)
- g**
- h**

— **Right to residence** — The Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the “shared household” — S. 2(s) r/w Ss. 17 and 19 of the DV Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same (*see* Shortnote *M* on meaning of “shared household”) (Paras 87 to 89) a

— **Maintenance of minor children** — Living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children — Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support — It should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed (Para 91) b

— **Educational expenses of children** — Education expenses of the children must be normally borne by the father — If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties (Para 92) c

— **Serious disability or ill health** — Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance (Para 93) d

— **What is not relevant** — *The financial position of parents of wife is not material for determining the quantum of maintenance* — Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005, Ss. 20(2) and 2(s) r/w Ss. 17 and 19 (Paras 77 to 93 and 130) e

Held :

Criteria for determining quantum of maintenance — No straitjacket formula

The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded. (Para 77) f

The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. (Para 78) g

Jasbir Kaur Sehgal v. District Judge, Dehradun, (1997) 7 SCC 7; *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290, *relied on* h

a The financial position of the parents of the applicant wife would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations, the court should mould the claim for maintenance based on various factors brought before it. (Para 79)

b *Manish Jain v. Akanksha Jain*, (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712, *relied on*.

c On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. (Para 80)

Reema Salkan v. Sumer Singh Salkan, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339, *relied on*

d A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home. The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort. (Para 81)

e *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356, *relied on*

f Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Section 23(2) of the HAMA provides the following factors which may be taken into consideration: (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source. (Para 82)

g Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home. (Para 83)

Factors for determining maintenance

The following factors have been laid down for determining maintenance:

1. Status of the parties.
2. Reasonable wants of the claimant.
- h* 3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.

5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

6. Non-applicant's liabilities, if any.

7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.

8. Payment capacity of the non-applicant.

9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.

10. The non-applicant to defray the cost of litigation.

11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act. (Para 84)

Bharat Hegde v. Saroj Hegde, 2007 SCC OnLine Del 622, *approved*

Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable: (Para 85)

(a) Age and employment of parties

In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years. (Para 86)

(b) Right to residence — Shared household

Section 19(1)(f) of the DV Act provides that the Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the Magistrate may direct the respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties. (Para 89)

Section 2(s) read with Sections 17 and 19 of the DV Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same. There is no requirement of law that the husband should be a member of the joint family, or that the household must belong to the joint family, in which he or the aggrieved woman has any right, title or interest. The shared household may not necessarily be owned or tenanted by the husband singly or jointly. (Paras 87 and 88)

Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414, *relied on*

(c) Where wife is earning some income — Obligation of husband to provide maintenance is higher

- a** The obligation of the husband to provide maintenance stands on a higher pedestal than the wife. Thus, the courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. In fact, furthermore, merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself in accordance with the lifestyle of her husband in the matrimonial home. Sustenance does not mean, and cannot be allowed to mean mere survival. (Paras 90 to 90.5)
- b**

(d) Presumption — Adverse inference against husband when permissible

- An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court. (Para 90.4)
- c**

- d** *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785; *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356; *Shailja v. Khobbanna*, (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308, *relied on*

Sunita Kachwaha v. Anil Kachwaha, (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589, *affirmed*

- e** *P. Suresh v. S. Deepa*, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar); *Sanjay Damodar Kale v. Kalyani Sanjay Kale*, 2020 SCC OnLine Bom 694; *Vipul Lakhanpal v. Pooja Sharma*, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451; *Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : AIR 1968 Del 174, *approved*

(e) Maintenance of minor children

- f** The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed. (Para 91)

- Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties. (Para 92)
- g**

(f) Serious disability or ill health

- Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance. (Para 93)

- h** The following directions are issued in exercise of powers under Article 142 of the Constitution: For determining the quantum of maintenance payable to an

applicant, the court shall take into account the criteria enumerated in Part B-III (contained in paras 77 to 93, and also set out above) of the judgment. The factors are however not exhaustive, and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case. (Para 130)

F. Family and Personal Laws — Date from which maintenance is to be awarded — Held, date of filing of application must always be regarded as the starting point for grant of maintenance — Further, held, even though a judicial discretion is conferred upon court to grant maintenance either from the date of application or from the date of the order in S. 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including S. 125 CrPC — Rationale for, explained

— *Significant delay in disposal in applications for interim maintenance* — The period during which the maintenance proceedings remained pending is not within the control of the applicant — Therefore, it would be in the interest of justice and fair play that maintenance is awarded from date of application — Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order (Paras 97, 109 and 110 and 113)

— *Social justice objective of maintenance should not be defeated* — While dealing with the application of a destitute wife or hapless children or parents, the court is dealing with the marginalised sections of the society — Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice — Financial constraints of a dependent spouse hampers their capacity to be effectively represented before the court — When legislature has provided summary, quick and comparatively inexpensive remedy, maintenance should be awarded from date of application to prevent a dependant from being reduced to destitution and vagrancy (Paras 96, 97, 111 and 112)

— *Absence of uniform regime* — There is a vast variance in the practice adopted by the Family Courts in the country, with respect to the date from which maintenance must be awarded — There is no provision in the HMA or the DV Act as to date from which maintenance is to be awarded — S. 125(2) CrPC is the only statutory provision which provides that the Magistrate may award maintenance either from the date of the order, or from the date of application — It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned — Criminal Procedure Code, 1973, S. 125(2) (Paras 94 to 113 and 131)

G. Criminal Procedure Code, 1973 — S. 125 — Date from which maintenance is to be awarded — From date of filing application — Held, even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in S. 125(2)

CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including S. 125 CrPC (Para 109)

a *Held :*

Date from which maintenance to be awarded

There is no provision in the HMA with respect to the date from which an order of maintenance may be made effective. Similarly, Section 12 of the DV Act does not provide the date from which the maintenance is to be awarded. Section 125(2) CrPC is the only statutory provision which provides that the Magistrate may award maintenance either from the date of the order, or from the date of application. (Para 94)

K. Sivaram v. K. Mangalamba, 1989 SCC OnLine AP 60 : (1989) 1 AP LJ 604, referred to

In the absence of a uniform regime, there is a vast variance in the practice adopted by the Family Courts in the country, with respect to the date from which maintenance must be awarded. The divergent views taken by the Family Courts are: *first*, from the date on which the application for maintenance was filed; *second*, the date of the order granting maintenance; *third*, the date on which the summons was served upon the respondent. (Paras 95 and 108)

Maintenance has to be awarded from date of application

The view that maintenance ought to be granted from the date when the application was made, is based on the rationale that the primary object of maintenance laws is to protect a deserted wife and dependent children from destitution and vagrancy. If maintenance is not paid from the date of application, the party seeking maintenance would be deprived of sustenance, owing to the time taken for disposal of the application, which often runs into several years. (Para 96)

The legislature intended to provide a summary, quick and comparatively inexpensive remedy to the neglected person. Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order. (Para 97)

Susmita Mohanty v. Rabindra Nath Sahu, (1996) 1 OLR 361, approved

Even though the decision to award maintenance either from the date of application, or from the date of order, was within the discretion of the court, it would be appropriate to grant maintenance from the date of application. (Para 98)

Kanhu Charan Jena v. Nirmala Jena, 2000 SCC OnLine Ori 217 : 2001 Cri LJ 879; *Arun Kumar Nayak v. Urmila Jena*, 2010 SCC OnLine Ori 30 : (2010) 93 AIC 726; *Krishna v. Dharam Raj*, 1991 SCC OnLine MP 6, approved

The law governing payment of maintenance under Section 125 CrPC from the date of application, was extended to HAMA. The Court held that the date of application should always be regarded as the starting point for payment of maintenance. (Para 100)

Ganga Prasad Srivastava v. Addl. District Judge, Gonda, 2019 SCC OnLine All 5428; *Lavlesh Shukla v. Rukmani*, 2019 SCC OnLine Del 11709, approved

There are divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance

from the date of application in all cases, including Section 125 CrPC. In the practical working of the provisions relating to maintenance, there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application. (Para 109)

The entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application. (Para 110)

Shail Kumari Devi v. Krishan Bhagwan Pathak, (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839; *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200, followed

The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hampers their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned. (Para 111)

While dealing with the application of a destitute wife or hapless children or parents under this provision, the court is dealing with the marginalised sections of the society. The purpose is to achieve "social justice" which is the constitutional vision, enshrined in the Preamble of the Constitution. Therefore, it becomes the bounden duty of the courts to advance the cause of the social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society. (Para 112)

Badshah v. Urmila Badshah Godse, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51, followed

It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant. (Para 113)

Bina Devi v. State of U.P., 2010 SCC OnLine All 236 : (2010) 69 ACC 19; *Amit Verma v. Sangeeta Verma*, 2020 SCC OnLine MP 2657; *S. Radhakumari v. K.M.K. Nair*, 1982 SCC OnLine Ker 51 : AIR 1983 Ker 139; *Samir Kr. Banerjee v. Sujata Banerjee*, 1965 SCC OnLine Cal 196; *Gouri Das v. Pradyumna Kumar Das*, (1986) 2 OLR 44; *Kalpna Das v. Sarat Kumar Das*, 2009 SCC OnLine Ori 21 : AIR 2009 Ori 133, overruled

The following directions are issued in exercise of powers under Article 142 of the Constitution: It is made clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B-IV of the judgment (contained in paras 94 to 113 of the judgment, and set out above). (Para 131)

H. Family and Personal Laws — Enforcement of orders of maintenance — Object behind timely enforcement and manner of enforcement — Law clarified

a — *Object behind timely enforcement* — Very object of social welfare legislation would be defeated if orders of maintenance are not enforced in timely manner

b — *Manner of enforcement* — An order or decree of maintenance may be enforced under S. 28-A of the HMA, 1955; S. 20(6) of the DV Act; and S. 128 CrPC, as may be applicable — The order of maintenance may be enforced as a money decree of a civil court as per the provisions of CPC, more particularly Ss. 51, 55, 58 and 60 r/w Or. 21 — It can be recovered in the manner as provided for fines and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier [S. 125(3) CrPC]

c — Criminal Procedure Code, 1973 — Ss. 125 to 128 — Civil Procedure Code, 1908 — Ss. 51, 55, 58 and 60 r/w Or. 21 — Hindu Marriage Act, 1955 — S. 28-A — Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005, S. 20(6) (Paras 114, 117, 125 and 132)
Held :

Enforcement of orders of maintenance

d Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. (Para 114)

Sushila Viresh Chhadva v. Viresh Nagshi Chhadva, 1995 SCC OnLine Bom 315; AIR 1996 Bom 94, approved

An application for execution of an order of maintenance can be filed under the following provisions:

e (a) Section 28-A of the Hindu Marriage Act, 1955 read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an order passed under Section 24 of the Hindu Marriage Act (before the Family Court);
(b) Section 20(6) of the DV Act (before the Judicial Magistrate); and
(c) Section 128 CrPC before the Magistrate's Court. (Para 115)

f Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with CPC/CrPC. (Para 116)

Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier. (Para 117)

Decree of maintenance may be enforced like a decree of a civil court

g The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of CPC, more particularly Sections 51, 55, 58, 60 read with Order 21 CPC. (Para 125)

h The following directions are issued in exercise of powers under Article 142 of the Constitution: For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of

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the HMA, 1955; Section 20(6) of the DV Act; and Section 128 CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of CPC, more particularly Sections 51, 55, 58, 60 read with Order 21. (Para 132)

I. Family and Personal Laws — Maintenance and Financial Provision/ Alimony/Palimony — Striking off the defence — When permissible — Principles summarised — Held, striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife, and minor children — Contempt proceedings for wilful disobedience may be initiated before the appropriate court — Criminal Procedure Code, 1973, S. 125 (Paras 118 to 126)

Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915, *partly affirmed and partly limited*

Rani v. Parkash Singh, 1996 SCC OnLine P&H 52 : AIR 1996 P&H 175; *Mohinder Verma v. Sapna*, 2014 SCC OnLine P&H 25147; *Satish Kumar v. Meena*, 2001 SCC OnLine Del 817 : (2001) 60 DRJ 246; *Santosh Sehgal v. Murari Lal Sehgal*, 2006 SCC OnLine Del 585 : AIR 2007 Del 210, *clarified and partly approved and partly limited*

Gurvinder Singh v. Murti, 1990 SCC OnLine P&H 35; *Venkateshwar Dwivedi v. Ruchi Dwivedi*, 2017 SCC OnLine MP 2065; *Ravindra Kumar v. Renuka*, 2009 SCC OnLine Kar 481; *Davis v. Thomas*, 2007 SCC OnLine Ker 358 : ILR (2007) 4 Ker 389; *Sakeer Hussain T.P. v. Naseera*, 2016 SCC OnLine Ker 23592 : ILR (2016) 4 Ker 917, *overruled*

J. Criminal Procedure Code, 1973 — S. 125 — S. 125 CrPC vis-à-vis S. 3(b) of the HAMA — Distinction of rights under — Purpose and object of S. 125 CrPC is to provide immediate relief to the wife and children in a summary proceeding, whereas under S. 20 r/w S. 3(b) of the HAMA, a much larger right is contemplated, which requires determination by a civil court — (see also Shortnote B on how relief under overlapping jurisdictions for grant of maintenance under various statutes is to be given) — Hindu Adoptions and Maintenance Act, 1956, S. 3(b) (Paras 30 to 35)

Abhilasha v. Parkash, 2020 SCC OnLine SC 736; *Bhagwan Dutt v. Kamla Devi*, (1975) 2 SCC 386 : 1975 SCC (Cri) 563, *relied on*

K. Family and Personal Laws — Maintenance and Financial Provision/ Alimony/Palimony — Live-in relationship — Presumption of marriage — Strict proof of marriage should not be a precondition for grant of maintenance under S. 125 CrPC — Evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption of marriage — Criminal Procedure Code, 1973, S. 125 (Paras 39 and 40)

Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 : (2011) 1 SCC (Civ) 53 : (2011) 2 SCC (Cri) 666; *Kamala v. M.R. Mohan Kumar*, (2019) 11 SCC 491 : (2019) 4 SCC (Civ) 732 : (2019) 4 SCC (Cri) 242, *relied on*

Malimath Committee Report on Reforms of Criminal Justice System published in 2003, *referred to*

L. Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005 — Ss. 2(a), (f), (q), 3 and 17(2) — “Domestic relationship” in S. 2(f) of the DV Act — Expression “a relationship in the

nature of marriage” or live-in relationship akin to de facto marriage or common law marriage — When can a relationship fall within the expression “a relationship in the nature of marriage” under S. 2(f) of the DV Act —
a Guidelines though not exhaustive, reiterated (Paras 43 and 44)

D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469 : (2010) 4 SCC (Civ) 223 : (2011) 1 SCC (Cri) 59; *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755 : (2014) 5 SCC (Civ) 440 : (2014) 6 SCC (Cri) 593, *relied on*

M. Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005 — S. 2(s) and Ss. 17, 19 and 12 — Definition of
b “shared household” in S. 2(s) — Meaning of — Law summarised

— Legal interest in shared household not relevant — An aggrieved woman’s right to residence in a “shared household” is irrespective of her having any legal interest in the same — A shared household under S. 2(s) need not be owned singly by the husband — It may or may not be jointly owned or taken on rent by the husband — The intention of the parties and the nature of living, including the nature of the household, must be considered, to determine as to whether the parties intended to treat the premises as a “shared household” or not (Para 47)

— The “shared household” is the household which is the dwelling place of the aggrieved person in present time — It does not mean all the houses where the aggrieved person has lived in a domestic relationship along with the relatives of the husband — There will be a number of shared households, which was never contemplated by the legislative scheme — Mere fleeting or casual living at different places would not make it a shared household (Para 47)

— Balance required, especially when right is claimed against parents-in-law — The right to residence under S. 19 is, not an indefeasible right, especially when a daughter-in-law is claiming a right against aged parents-in-law — While granting relief under S. 12 of the DV Act, or in any civil proceeding, the court has to balance the rights between the aggrieved woman and the parents-in-law (Para 47)

— Right of residence is in addition to maintenance under S. 125 CrPC (Para 48)

Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414, *followed*

S.R. Batra v. Taruna Batra, (2007) 3 SCC 169 : (2007) 2 SCC (Cri) 56, *held, overruled*

N. Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005 — Ss. 2(a), (f) & (q) — Definitions of “aggrieved person” in S. 2(a), “domestic relationship” in S. 2(f) and “respondent” in S. 2(q) — Principles reiterated — Definition of “respondent” in S. 2(q) is gender neutral (Paras 41 and 42)

Hiral P. Harsora v. Kusum Narottamdas Harsora, (2016) 10 SCC 165 : (2017) 1 SCC (Civ) 468 : (2017) 1 SCC (Cri) 1, *relied on*

O. Crimes Against Women and Children — Protection of Women from Domestic Violence Act, 2005 — Ss. 22 and 23 — Claim for compensation and damages by aggrieved party for acts of domestic violence perpetrated by respondent — Ex parte orders — Scope of — Held, such ex parte orders can be granted by Magistrate if he is satisfied from the application and affidavit of aggrieved party that such domestic violence was committed or continuing or is likely to be committed by the respondent (Para 49)

P. Family and Personal Laws — Maintenance Pendente Lite/Interim Maintenance — Expeditious payment and adjudication — Expeditious payment of interim maintenance which was delayed by more than seven years, directed — Expeditious adjudication of substantive application under S. 125 CrPC, directed as proceedings pending for more than seven years — Challenge to order of interim maintenance by husband, rejected — Interim maintenance awarded by courts below for wife and son, affirmed — Criminal Procedure Code, 1973, S. 125 (Paras 9 to 11)

Q. Family and Personal Laws — Maintenance Pendente Lite/Interim Maintenance — Appeal by husband — In the appeal filed by the husband, prayer of wife for enhancement of interim maintenance for son, held, not maintainable — Liberty, however, given to wife to agitate/move Family Court for claiming said relief — Criminal Procedure Code, 1973, S. 125 (Paras 9.1 to 9.4)

Rajnesh v. Neha, 2018 SCC OnLine Bom 2181, *affirmed*

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R. Family and Personal Laws — Hindu Law — Adoption, Maintenance and Financial Provision — Maintenance/Financial Provision — Generally — Right to maintenance under HAMA and HMA — Distinctions and interplay — Explained — Hindu Marriage Act, 1955 — Ss. 24 and 25 — Hindu Adoptions and Maintenance Act, 1956, Ss. 18 and 19 (Paras 27 to 29)

S. Family and Personal Laws — Maintenance and Financial Provision/Alimony/Palimony — Maintenance to Wife, Children and Parents under Sections 125-128 CrPC — Quantum of maintenance — There is no ceiling on maintenance amount under Section 125 CrPC after 2001 Amendment — Introduction of express powers to grant interim maintenance — Criminal Procedure Code, 1973, S. 125 (Para 35)

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55.	(2007) 3 SCC 169 : (2007) 2 SCC (Cri) 56, <i>S.R. Batra v. Taruna Batra (held, overruled)</i>	361a, 361a-b, 361b-c
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57.	2007 SCC OnLine Ker 358 : ILR (2007) 4 Ker 389, <i>Davis v. Thomas (overruled)</i>	383b
58.	2006 SCC OnLine Del 585 : AIR 2007 Del 210, <i>Santosh Sehgal v. Murari Lal Sehgal (partly limited)</i>	382a, 382a-b
59.	2001 SCC OnLine Del 817 : (2001) 60 DRJ 246, <i>Satish Kumar v. Meena (partly limited)</i>	381g-h, 382c-d
60.	2001 SCC OnLine Bom 165 : (2002) 2 Mah LJ 53, <i>Panditrao Chimaji Kalure v. Gayabai Panditrao Kalure</i>	353e-f
61.	2000 SCC OnLine Ori 217 : 2001 Cri LJ 879, <i>Kanhu Charan Jena v. Nirmala Jena</i>	376c
62.	(1997) 11 SCC 286 : 1998 SCC (Cri) 160, <i>Sudeep Chaudhary v. Radha Chaudhary</i>	366e-f
63.	(1997) 7 SCC 7, <i>Jasbir Kaur Sehgal v. District Judge, Dehradun</i>	371f
64.	1996 SCC OnLine P&H 52 : AIR 1996 P&H 175, <i>Rani v. Parkash Singh (partly limited)</i>	380g-h, 382b, 382c
65.	(1996) 1 OLR 361, <i>Susmita Mohanty v. Rabindra Nath Sahu</i>	376b
66.	1995 SCC OnLine Bom 315 : AIR 1996 Bom 94, <i>Sushila Vikesh Chhadva v. Viresh Nagshi Chhadva</i>	380b
67.	(1993) 3 SCC 406 : 1993 SCC (Cri) 915, <i>Chand Dhawan v. Jawaharlal Dhawan</i>	353f-g
68.	1991 SCC OnLine MP 6, <i>Krishna v. Dharam Raj</i>	376d-e
69.	1990 SCC OnLine P&H 35, <i>Gurvinder Singh v. Murti (overruled)</i>	382e-f
70.	1989 SCC OnLine AP 60 : (1989) 1 AP LJ 604, <i>K. Sivaram v. K. Mangalamba</i>	375f-g
71.	(1986) 2 OLR 44, <i>Gouri Das v. Pradyumna Kumar Das (overruled)</i>	378b
72.	1982 SCC OnLine Ker 51 : AIR 1983 Ker 139, <i>S. Radhakumari v. K.M.K. Nair (overruled)</i>	378a
73.	(1978) 4 SCC 70 : 1978 SCC (Cri) 508, <i>Ramesh Chander Kaushal v. Veena Kaushal</i>	349a
74.	(1975) 2 SCC 386 : 1975 SCC (Cri) 563, <i>Bhagwan Dutt v. Kamla Devi</i>	356c
75.	(1969) 3 SCC 802 : 1970 SCC (Cri) 127, <i>Nanak Chand v. Chandra Kishore Aggarwal</i>	349e-f
76.	1968 SCC OnLine Del 52 : AIR 1968 Del 174, <i>Chander Parkash v. Shila Rani</i>	375a, 375b-c
77.	1965 SCC OnLine Cal 196, <i>Samir Kr. Banerjee v. Sujata Banerjee (overruled)</i>	378a-b
78.	1964 SCC OnLine Pat 160 : AIR 1965 Pat 442, <i>Nalini Ranjan Chakravarty v. Kiran Rani Chakravarty</i>	350a
79.	(1962) 2 Cri LJ 528 (Cal), <i>Mahabir Agarwalla v. Gita Roy</i>	350a
80.	1962 SCC OnLine All 191 : AIR 1963 All 355, <i>Ram Singh v. State</i>	349g-h

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The Judgment of the Court was delivered by

INDU MALHOTRA, J.—

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b

PART A

c Order passed in Criminal Appeal No. 730 of 2020

d 1. Leave granted. The present criminal appeal arises out of an application for interim maintenance filed in a petition under Section 125 CrPC by the respondent wife and minor son. Respondent 1 wife left the matrimonial home in January 2013, shortly after the birth of the son — Respondent 2. On 2-9-2013, the wife filed an application for interim maintenance under Section 125 CrPC on behalf of herself and the minor son. The Family Court vide a detailed order dated 24-8-2015 awarded interim maintenance of Rs 15,000 per month to Respondent 1 wife from 1-9-2013; and Rs 5000 per month as interim maintenance for Respondent 2 son from 1-9-2013 to 31-8-2015; and @ Rs 10,000 per month from 1-9-2015 onwards till further orders were passed in the main petition.

e

2. The appellant husband challenged the order of the Family Court vide Criminal Writ Petition No. 875 of 2015 filed before the Bombay High Court, Nagpur Bench. The High Court dismissed the writ petition vide order dated 14-8-2018¹, and affirmed the judgment passed by the Family Court.

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3. The present appeal has been filed to impugn the order dated 14-8-2018¹. This Court issued notice² to the wife and directed the appellant husband to file his income tax returns and assessment orders for the period from 2005-2006 till date. He was also directed to place a photocopy of his passport on record. By a further order dated 11-9-2019³, the appellant husband was directed to make payment of the arrears of Rs 2,00,000 towards interim maintenance to the wife; and a further amount of Rs 3,00,000, which was due and payable to the wife towards arrears of maintenance, as per his own admission. By a subsequent order dated 14-10-2019⁴, it was recorded that only a part of the arrears had been paid. A final opportunity was granted to the appellant husband to make payment of the balance amount by 30-11-2019, failing which, the Court would

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¹ *Rajnish v. Neha*, 2018 SCC OnLine Bom 2181

² *Rajnish v. Neha*, 2018 SCC OnLine SC 3641

³ *Rajnish v. Neha*, 2019 SCC OnLine SC 1916

⁴ *Rajnish v. Neha*, 2019 SCC OnLine SC 1917

proceed under the Contempt of Courts Act for wilful disobedience of the orders passed by this Court.

4. In the backdrop of the facts of this case, we considered it fit to frame guidelines on certain aspects pertaining to the payment of maintenance in matrimonial matters. There are different statutes providing for making an application for grant of maintenance/interim maintenance, if any person having sufficient means neglects, or refuses to maintain his wife, children, parents. The different enactments provide an independent and distinct remedy framed with a specific object and purpose. In spite of time-frames being prescribed by various statutes for disposal of interim applications, we have noticed, in practice that in a vast majority of cases, the applications are not disposed of within the time-frame prescribed. To address various issues which arise for consideration in applications for grant of maintenance/interim maintenance, it is necessary to frame guidelines to ensure that there is uniformity and consistency in deciding the same. To seek assistance on these issues, we have appointed Ms Anitha Shenoy and Mr Gopal Sankaranarayanan, Senior Advocates as Amici Curiae, who have graciously accepted to assist this Court.

5. By a further order dated 17-12-2019⁵, the appellant was directed to pay an amount of Rs 1,45,000 to Respondent 1 wife within a period of 45 days. On the issue of framing guidelines, the National Legal Services Authority was directed to elicit responses from the State Legal Services Authorities of various States.

6. By a subsequent order dated 5-8-2020⁶, it was recorded that an affidavit of compliance had been filed on 4-8-2020 by the appellant husband, wherein it was stated that arrears of Rs 1,45,000 till 11-9-2019 had been paid by him in January 2020. However, he had made no further payment to the wife thereafter. With respect to the amount of Rs 10,000 p.m. payable for the minor son, the order had been complied with till July 2020. A statement was made by the counsel for the appellant that he was not disputing the payment of maintenance for his son, and would continue to pay the same. A direction was issued by this Court to pay the entire arrears of maintenance to the wife @ Rs 15,000 p.m. as fixed by the Family Court, and continue to pay the said amount during the pendency of proceedings.

7. By the order dated 25-8-2020⁷, it was noted that the appellant had filed an affidavit dated 23-8-2020 wherein he had admitted and acknowledged that an amount of Rs 5,00,000 was pending towards arrears of maintenance to Respondent 1 wife. The appellant was directed to pay 50% of the arrears within a period of 4 weeks to Respondent 1, failing which, he was directed to remain present before the Court on the next date of hearing. The counsel for the husband placed on record a chart of various proceedings pending between the parties. Taking note of the aforesaid facts, we considered it appropriate to refer the matter for mediation by Mr Shridhar Purohit, Advocate, a well-known

⁵ *Rajnish v. Neha*, 2019 SCC OnLine SC 1918

⁶ *Rajnish v. Neha*, 2020 SCC OnLine SC 940

⁷ *Rajnish v. Neha*, 2020 SCC OnLine SC 941

Mediator in Nagpur, to resolve all disputes pending between the parties, and arrive at an overall settlement.

- a** **8.** On 8-10-2020⁸, we were informed that the mediation had failed. The husband appeared before the Court, and made an oral statement that he did not have the financial means to comply with the order of maintenance payable to Respondent 1 wife, and had to borrow loans from his father to pay the same. He however stated that he had paid the maintenance awarded to the son, and would continue to do so without demur. Both parties addressed arguments and
- b** filed their written submissions.

9. We have heard the counsel for the parties, and perused the written submissions filed on their behalf.

- c** **9.1.** The husband has inter alia submitted that he was presently unemployed, and was not in a position to pay maintenance to Respondent 1 wife. He stated that he did not own any immovable property, and had only one operational bank account. The husband declined to pay any further amount towards the maintenance of his wife. It was further submitted that the Family Court had erroneously relied upon the income tax returns of 2006, while determining the maintenance payable in 2013. He further submitted that he was exploring new business projects, which would enable him to be in a better position to sustain his family.

- d** **9.2.** The wife has inter alia submitted that the amount of Rs 10,000 awarded for the son was granted when he was 2½ years old in 2015. The said amount was now highly inadequate to meet the expenses of a growing child, who is 7½ years old, and is a school-going boy. It was further submitted that the admission fee for the current academic year 2020-2021 had not yet been paid. If the fee was not paid within time, the school would discontinue sending the link for online classes. She submitted that she was being overburdened by the growing
- e** expenses, with no support from the husband.

- f** **9.3.** With respect to the contention of the husband that he had no income, she submitted that the husband had made investments in real estate projects, and other businesses, which he was concealing from the Court, and diverting the income to his parents. It has also been alleged that the appellant had retained illegal possession of her *streedhan*, which he was refusing to return. Despite orders being passed by this Court, and in the proceedings under the DV Act, he was deliberately not complying with the same. In these circumstances, it was submitted that there was a major trust deficit, and there was no prospect for reconciliation.

- g** **9.4.** With respect to the issue of enhancement of maintenance for the son, the respondent is at liberty to move the Family Court for the said relief. We cannot grant this relief in the present appeal, as it has been filed by the husband.

10. In the facts and circumstances of the case, we order and direct that:

- h** **10.1.** (a) The judgment and order dated 24-8-2015 passed by the Family Court, Nagpur, affirmed by the Bombay High Court, Nagpur Bench vide order

dated 14-8-2018¹ for payment of interim maintenance @ Rs 15,000 p.m. to Respondent 1 wife, and Rs 10,000 p.m. to Respondent 2 son, is hereby affirmed by this Court.

10.2. (b) The husband is directed to pay the entire arrears of maintenance @ Rs 15,000 p.m., within a period of 12 weeks from the date of this judgment, and continue to comply with this order during the pendency of the proceedings under Section 125 CrPC before the Family Court.

10.3. (c) If the appellant husband fails to comply with the aforesaid directions of this Court, it would be open to the respondents to have the order enforced under Section 128 CrPC, and take recourse to all other remedies which are available in accordance with law.

10.4. (d) The proceedings for payment of interim maintenance under Section 125 CrPC have been pending between the parties for a period of over 7 years now. We deem it appropriate that the Family Court decides the substantive application under Section 125 CrPC in Petition No. E-443/2013 finally, in light of the directions/guidelines issued in the present judgment, within a period of 6 months from the date of this judgment.

11. The Registry is directed to forward a complete copy of the pleadings, along with the written submissions filed by the parties, and the record of the proceedings in the present criminal appeal, to the Family Court, Nagpur. The present criminal appeal is disposed of accordingly.

PART B

12. Given the backdrop of the facts of the present case, which reveal that the application for interim maintenance under Section 125 CrPC has remained pending before the courts for seven years now, and the difficulties encountered in the enforcement of orders passed by the courts, as the wife was constrained to move successive applications for enforcement from time to time, we deem it appropriate to frame guidelines on the issue of maintenance, which would cover overlapping jurisdiction under different enactments for payment of maintenance, payment of interim maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and enforcement of orders of maintenance.

Guidelines/Directions on maintenance

13. Maintenance laws have been enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy. Article 15(3) of the Constitution of India provides that:

“15. (3) Nothing in this article shall prevent the State from making any special provision for women and children.”

Article 15(3) reinforced by Article 39 of the Constitution of India, which envisages a positive role for the State in fostering change towards the empowerment of women, led to the enactment of various legislations from time to time.

¹ *Rajesh v. Neha*, 2018 SCC OnLine Bom 2181

14. Krishna Iyer, J. in his judgment in *Ramesh Chander Kaushal v. Veena Kaushal*⁹ held that the object of maintenance laws is: (SCC p. 74, para 9)

- a* “9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts.”
- b*

- 15.** The legislations which have been framed on the issue of maintenance are the Special Marriage Act, 1954 (“SMA”), Section 125 of the Criminal Procedure Code, 1973; and the Protection of Women from Domestic Violence Act, 2005 (“the DV Act”) which provide a statutory remedy to women, irrespective of the religious community to which they belong, apart from the personal laws applicable to various religious communities.
- c*

I. Issue of Overlapping Jurisdiction

- 16.** Maintenance may be claimed under one or more of the aforementioned statutes, since each of these enactments provides an independent and distinct remedy framed with a specific object and purpose. For instance, a Hindu wife may claim maintenance under the Hindu Adoptions and Maintenance Act, 1956 (“HAMA”), and also in a substantive proceeding for either dissolution of marriage, or restitution of conjugal rights, etc. under the Hindu Marriage Act, 1955 (“HMA”) by invoking Sections 24 and 25 of the said Act.
- d*
- e*

17. In *Nanak Chand v. Chandra Kishore Aggarwal*¹⁰, the Supreme Court held that there was no inconsistency between the CrPC and HAMA. Section 4(b) of the HAMA would not repeal or affect the provisions of Section 488 of the old CrPC. It was held that: (SCC pp. 804-05, para 4)

- f* “4. ... Both can stand together. The Maintenance Act is an act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, insofar as it dealt with the maintenance of children, was in any way inconsistent with Section 488 CrPC. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. Recently the question came before the Allahabad High Court in *Ram Singh v. State*¹¹, before the Calcutta High Court in *Mahabir*
- g*

h ⁹ (1978) 4 SCC 70 : 1978 SCC (Cri) 508

¹⁰ (1969) 3 SCC 802 : 1970 SCC (Cri) 127

¹¹ 1962 SCC OnLine All 191 : AIR 1963 All 355

*Agarwalla v. Gita Roy*¹² and before the Patna High Court in *Nalini Ranjan Chakravarty v. Kiran Rani Chakravarty*¹³. The three High Courts have, in our view, correctly come to the conclusion that *Section 4(b) of the Maintenance Act does not repeal or affect in any manner the provisions contained in Section 488 CrPC.*" (emphasis supplied)

18. While it is true that a party is not precluded from approaching the Court under one or more enactments, since the nature and purpose of the relief under each Act is distinct and independent, it is equally true that the simultaneous operation of these Acts, would lead to multiplicity of proceedings and conflicting orders. This would have the inevitable effect of overlapping jurisdiction. This process requires to be streamlined, so that the respondent husband is not obligated to comply with successive orders of maintenance passed under different enactments. For instance, if in a previous proceeding under Section 125 CrPC, an amount is awarded towards maintenance, in the subsequent proceeding filed for dissolution of marriage under the Hindu Marriage Act, where an application for maintenance pendente lite is filed under Section 24 of that Act, or for maintenance under Section 25, the payment awarded in the earlier proceeding must be taken note of, while deciding the amount awarded under HMA.

1. Statutory provisions under various enactments

(a) *The Special Marriage Act, 1954 ("SMA")*

19. Section 4 of the Special Marriage Act, 1954 provides that a marriage between any two persons who are citizens of India may be solemnised under this Act, notwithstanding anything contained in any other law for the time being in force. It is a secular legislation applicable to all persons who solemnise their marriage in India.

20. Section 36 of the Special Marriage Act provides that a wife is entitled to claim pendente lite maintenance, if she does not have sufficient independent income to support her and for legal expenses. The maintenance may be granted on a weekly or monthly basis during the pendency of the matrimonial proceedings. The court would determine the quantum of maintenance depending on the income of the husband, and award such amount as may seem reasonable. Section 36 reads as:

36. Alimony pendente lite.—Where in any proceeding under Chapter V or Chapter VI it appears to the District Court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as, having regard to the husband's income, it may seem to the court to be reasonable:

¹² (1962) 2 Cri LJ 528 (Cal)

¹³ 1964 SCC OnLine Pat 160 : AIR 1965 Pat 442

a Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband."

b 21. Section 37 provides for grant of permanent alimony at the time of passing of the decree, or subsequent thereto. Permanent alimony is the consolidated payment made by the husband to the wife towards her maintenance for life. Section 37 reads as:

c "37. *Permanent alimony and maintenance.*—(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property, such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability, the conduct of the parties and other circumstances of the case, as it may seem to the court to be just.

d (2) If the District Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under subsection (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the District Court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, it may, at the instance of the husband, vary, modify or rescind any such order and in such manner as the court may deem just."

e (b) *The Hindu Marriage Act, 1955 ("HMA")*

f 22. The HMA is a complete code which provides for the rights, liabilities and obligations arising from a marriage between two Hindus. Sections 24 and 25 make provision for maintenance to a party who has no independent income sufficient for his or her support, and necessary expenses. This is a gender-neutral provision, where either the wife or the husband may claim maintenance. The prerequisite is that the applicant does not have independent income which is sufficient for her or his support, during the pendency of the lis.

g 23. Section 24 of the HMA provides for maintenance pendente lite, where the court may direct the respondent to pay the expenses of the proceeding, and pay such reasonable monthly amount, which is considered to be reasonable, having regard to the income of both the parties. Section 24 reads as:

h "24. *Maintenance pendente lite and expenses of proceedings.*—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding

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such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be." (emphasis supplied)

The proviso to Section 24 providing a timeline of 60 days for disposal of the application was inserted vide Act 49 of 2001 w.e.f. 24-9-2001.

24. Section 25 provides for grant of permanent alimony, which reads as:

"25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of *passing any decree or at any time subsequent thereto*, on application made to it for the purpose by either the wife or the husband, as the case may be, order that *the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.*

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just."

25. Section 26 of the HMA provides that the court may from time to time pass interim orders with respect to the custody, maintenance and education of the minor children.

(c) **Hindu Adoptions & Maintenance Act, 1956 ("HAMA")**

26. HAMA is a special legislation which was enacted to amend and codify the laws relating to adoption and maintenance amongst Hindus, during the subsistence of the marriage. Section 18 provides that a Hindu wife shall be entitled to be maintained by her husband during her lifetime. She is entitled to make a claim for a separate residence, without forfeiting her right to maintenance. Section 18 read in conjunction with Section 23 states the factors required to be considered for deciding the quantum of maintenance to be paid. Under sub-section (2) of Section 18, the husband has the obligation to maintain his wife, even though she may be living separately. The right of separate

residence and maintenance would however not be available if the wife has been unchaste, or has converted to another religion. Section 18 reads as follows:

a “18. **Maintenance of wife.**—(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance—

b (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

c (c) [* * *]

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying living separately.

d (3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.”

e 27. The distinction between maintenance under HMA and HAMA is that the right under Section 18 of the HAMA is available during the subsistence of a marriage, without any matrimonial proceeding pending between the parties. Once there is a divorce, the wife has to seek relief under Section 25 of the HMA.¹⁴ Under HMA, either the wife, or the husband, may move for judicial separation, restitution of conjugal rights, dissolution of marriage, payment of interim maintenance under Section 24, and permanent alimony under Section 25 of the Act, whereas under Section 18 of the HAMA, only a wife may seek maintenance.

f 28. The interplay between the claim for maintenance under HMA and HAMA came up for consideration by the Supreme Court in *Chand Dhawan v. Jawaharlal Dhawan*¹⁵. The Supreme Court, while considering the various laws relating to marriage amongst Hindus, discussed the scope of applications under the HMA and HAMA in the following words: (SCC pp. 415-16, para 23)

g “23. ... Section 18(1) of the Hindu Adoptions and Maintenance Act, 1956 entitles a Hindu wife to claim maintenance from her husband during her lifetime. Sub-section (2) of Section 18 grants her the right to live

h 14 *Panditrao Chimaji Kalure v. Gayabai Panditrao Kalure*, 2001 SCC OnLine Bom 165 : (2002) 2 Mah.LJ 53

15 (1993) 3 SCC 406 : 1993 SCC (Cri) 915

separately, without forfeiting her claim to maintenance, if he is guilty of any of the misbehaviours enumerated therein or on account of his being in one of objectionable conditions as mentioned therein. So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband. On the other hand, under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated (sic) on the pendency of a litigation of the kind envisaged under Sections 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her consent. Thus when her marital status is to be affected or disrupted the court does so by passing a decree for or against her. On or at the time of the happening of that event, the court being seized of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the court retains the jurisdiction at subsequent stages to fulfil this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The court further retains the power to change or alter the order in view of the changed circumstances. Thus the whole exercise is within the gamut (sic gamut) of a diseased or a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. In other words without the marital status being affected or disrupted by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionising the law applicable to Hindus." (emphasis supplied)

29. Section 19 of the HAMA provides that a widowed daughter-in-law may claim maintenance from her father-in-law if (i) she is unable to maintain herself out of her own earnings or other property; or, (ii) where she has no property of her own, is unable to obtain maintenance; (a) from the estate of her husband, or her father or mother, or (b) from her son or daughter, if any, or his or her estate.

30. Section 20 of the HAMA provides for maintenance of children and aged parents. Section 20 casts a statutory obligation on a Hindu male to maintain an unmarried daughter, who is unable to maintain herself out of her own earnings, or other property. In *Abhilasha v. Parkash*¹⁶, a three-Judge Bench of this Court held that Section 20(3) is a recognition of the principles of Hindu law, particularly the obligation of the father to maintain an unmarried

a daughter. The right is absolute under personal law, which has been given statutory recognition by this Act. The Court noted the distinction between the award of maintenance to children under Section 125 CrPC, which limits the claim of maintenance to a child, until he or she attains majority. However, if an unmarried daughter is by reason of any physical or mental abnormality or injury, unable to maintain herself, under Section 125(1)(c), the father would be obligated to maintain her even after she has attained majority. The maintenance contemplated under HAMA is a wider concept. Section 3(b) contains an inclusive definition of maintenance including marriage expenses. The purpose and object of Section 125 CrPC is to provide immediate relief to the wife and children in a summary proceeding, whereas under Section 20 read with Section 3(b) of the HAMA, a much larger right is contemplated, which requires determination by a civil court.

c 31. Section 22 provides for maintenance of dependants. Section 23 provides that while awarding maintenance, the court shall have due regard to the criteria mentioned therein:

d “23. *Amount of maintenance*.—(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the court shall have due regard to the consideration set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

- e (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant’s property and any income derived from such property, or from the claimant’s own earning or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

f (3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to—

- g (a) the net value of the estate of the deceased after providing for the payment of his debts;
- (b) the provision, if any, made under a will of the deceased in respect, of the dependant;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;
- (f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other course;
- h (g) the number of dependants entitled to maintenance under this Act.”

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(d) Section 125 CrPC

32. Chapter IX of the Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 CrPC may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 CrPC is to provide immediate relief to an applicant. An application under Section 125 CrPC is predicated on two conditions: (i) the husband has sufficient means; and (ii) “neglects” to maintain his wife, who is unable to maintain herself. In such a case, the husband may be directed by the Magistrate to pay such monthly sum to the wife, as deemed fit. Maintenance is awarded on the basis of the financial capacity of the husband and other relevant factors.

33. The remedy provided by Section 125 is summary in nature, and the substantive disputes with respect to dissolution of marriage can be determined by a civil court/Family Court in an appropriate proceeding, such as the Hindu Marriage Act, 1955.

34. In *Bhagwan Dutt v. Kamla Devi*¹⁷ the Supreme Court held that under Section 125(1) CrPC only a wife who is “unable to maintain herself” is entitled to seek maintenance. The Court held: (SCC p. 392, para 19)

“19. The object of these provisions being to prevent vagrancy and destitution, the Magistrate has to find out as to what is required by the wife to maintain a standard of living which is neither luxurious nor penurious, but is modestly consistent with the status of the family. The needs and requirements of the wife for such moderate living can be fairly determined, only if her separate income, also, is taken into account together with the earnings of the husband and his commitments.” (emphasis supplied)

35. Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs 500 “in the whole”. In view of the rising costs of living and inflation rates, the ceiling of Rs 500 was done away with by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of “interim maintenance”. The Magistrate was vested with the power to order the respondent to make a monthly allowance towards interim maintenance during the pendency of the petition. Under sub-section (2) of Section 125, the court is conferred with the discretion to award payment of maintenance either from the date of the order, or from the date of the application. Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days from the date of service of notice on the respondent.

36. The amended Section 125 reads as under:

“125. Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain—

(a) his wife, unable to maintain herself, or

¹⁷ (1975) 2 SCC 386 : 1975 SCC (Cri) 563

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(b) *his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*

a (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:

b 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:

c 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:

d 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—

e (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.

f (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.

g (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:

h 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 a 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 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.” (emphasis supplied)

37. In *Chaturbhuj v. Sita Bai*¹⁸ this Court held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. Section 125 CrPC is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

38. Proceedings under Section 125 CrPC are summary in nature. In *Bhuvan Mohan Singh v. Meena*¹⁹ this Court held that Section 125 CrPC was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

39. The issue whether presumption of marriage arises when parties are in a live-in relationship for a long period of time, which would give rise to a claim under Section 125 CrPC came up for consideration in *Chanmuniya v. Virendra Kumar Singh Kushwaha*²⁰ before the Supreme Court. It was held that where a man and a woman have cohabited for a long period of time, in the absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a de facto marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation

18 (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356

19 (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200

20 (2011) 1 SCC 141 : (2011) 1 SCC (Civ) 53 : (2011) 2 SCC (Cri) 666. This judgment was referred to a larger Bench.

a must be given to the term “wife”, to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time. Strict proof of marriage should not be a precondition for grant of maintenance under Section 125 CrPC. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage.

b **40.** The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings under Section 125 CrPC such strict standard of proof is not necessary.²¹

c **(e) Protection of Women from Domestic Violence Act, 2005 (“the DV Act”)**

d **41.** The DV Act stands on a separate footing from the laws discussed hereinabove. The DV Act provides relief to an aggrieved woman who is subjected to “domestic violence”. The “aggrieved person” has been defined by Section 2(a) to mean any woman who is, or has been, in a domestic relationship with the respondent, and alleges to have been subjected to any act of domestic violence. Section 2(f) defines “domestic relationship” to include a relationship between two persons who live, or have at any point of time lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption, or are family members living together as a joint family.

e **42.** Section 2(q) of the Act defined “respondent” to mean an “adult male person” who is, or has been, in a domestic relationship with the aggrieved woman. In *Hiral P. Harsora v. Kusum Narottamdas Harsora*²² this Court held that the “respondent” could also be a female in a domestic relationship with the aggrieved person. Section 3 of the DV Act gives a gender-neutral definition to “domestic violence”. Physical abuse, verbal abuse, emotional abuse and economic abuse can also be inflicted by women against other women. Even sexual abuse may, in a given fact circumstance, be by one woman on another. Section 17(2) provides that the aggrieved person cannot be evicted or excluded from a “shared household”, or any part of it by the “respondent”, save in accordance with the procedure established by law. If “respondent” is to be read as only an adult male person, women who evict or exclude the aggrieved person would then not be covered by the ambit of the Act, and defeat the very object, *f* by putting forward female persons who can evict or exclude the aggrieved woman from the shared household. The Court struck down the words “adult male” before the word “person” in Section 2(q) of the 2005 Act, and deleted the proviso to Section 2(q), as being contrary to the object of the Act.

h ²¹ *Kamala v. M.R. Mohan Kumar*, (2019) 11 SCC 491 : (2019) 4 SCC (Civ) 732 : (2019) 4 SCC (Cri) 242

²² (2016) 10 SCC 165 : (2017) 1 SCC (Civ) 468 : (2017) 1 SCC (Cri) 1

43. The expression “relationship in the nature of marriage” as being akin to a common law or a de facto marriage, came up for consideration in *D. Velusamy v. D. Patchaiahmmal*²³. It was opined that a common law marriage is one which requires that although a couple may not be formally married: (a) the couple hold themselves out to society as being akin to spouses; (b) the parties must be of legal age to marry; (c) the parties must be otherwise qualified to enter into a legal marriage, including being unmarried; and (d) the parties must have voluntarily cohabited, and held themselves out to the world as being akin to spouses for a significant period of time. However, not all live-in relationships would amount to a relationship in the nature of marriage to avail the benefit of the DV Act. Merely spending weekends together, or a one-night stand, would not make it a “domestic relationship”.

44. For a live-in relationship to fall within the expression “relationship in the nature of marriage”, this Court in *Indra Sarma v. V.K.V. Sarma*²⁴ laid down the following guidelines: (a) duration of period of relationship; (b) shared household; (c) domestic arrangements; (d) pooling of resources and financial arrangements; (e) sexual relationship; (f) children; (g) socialisation in public; and (h) intention and conduct of the parties. The Court held that these guidelines were only indicative, and not exhaustive.

45. “Domestic violence” has been defined in Section 3 of the Act, which includes economic abuse as defined in Explanation 1(iv) to Section 3, as:

“Economic abuse which means deprivation of all or any economic or financial resources, to which the aggrieved person is entitled under any law or custom, whether payable under an order of a court or otherwise, or which the aggrieved person requires out of necessity, including but not limited to household necessities for the aggrieved person, or her children.”

46. Section 17 by a non obstante clause provides that notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the “shared household”, irrespective of whether she has any right, title or beneficial interest in the same. Section 17 reads as:

“17. Right to reside in a shared household.—(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.”

Section 19 deals with residence orders, grant of injunctive reliefs, or for alternate accommodation/payment of rent by the respondent.

²³ (2010) 10 SCC 469 : (2010) 4 SCC (Civ) 223 : (2011) 1 SCC (Cri) 59

²⁴ (2013) 15 SCC 755 : (2014) 5 SCC (Civ) 440 : (2014) 6 SCC (Cri) 593

- 47.** A three-Judge Bench of this Court in *Satish Chander Ahuja v. Sneha Ahuja*²⁵ has overruled the judgment in *S.R. Batra v. Taruna Batra*²⁶ wherein a two-Judge Bench held that the wife is entitled to claim a right of residence in a “shared household” under Section 17(1), which would only mean the house belonging to, or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. In *Satish Chander Ahuja*²⁵, the Court has held that although the judgment in *S.R. Batra*²⁶ noticed the definition of shared household under Section 2(s), it did not advert to different parts of the definition, which makes it clear that there was no requirement for the shared household to be owned singly or jointly by the husband, or taken on rent by the husband. If the interpretation given in *S.R. Batra*²⁶ is accepted, it would frustrate the object of the Act. The Court has taken the view that the definition of “shared household” in Section 2(s) is an exhaustive definition. The “shared household” is the household which is the dwelling place of the aggrieved person in present time. If the definition of “shared household” in Section 2(s) is read to mean all the houses where the aggrieved person has lived in a domestic relationship along with the relatives of the husband, there will be a number of shared households, which was never contemplated by the legislative scheme. The entire scheme of the legislation is to provide immediate relief to the aggrieved person with respect to the shared household where the aggrieved woman lives or has lived. The use of the expression “at any stage has lived”, is with the intent of not denying protection to an aggrieved woman merely on the ground that she was not living there on the date of the application, or on the date when the Magistrate passed the order under Section 19. The words “lives, or at any stage has lived in a domestic relationship” has to be given its normal and purposeful meaning. Living of the woman in a household must refer to a living which has some permanency. Mere fleeting or casual living at different places would not make it a shared household. The intention of the parties and the nature of living, including the nature of the household, must be considered, to determine as to whether the parties intended to treat the premises as a “shared household” or not. Section 2(s) read with Sections 17 and 19 grant an entitlement in favour of an aggrieved woman to the right of residence in a “shared household”, irrespective of her having any legal interest in the same or not. From the definition of “aggrieved person” and “respondent”, it was clear that:

- (i) it is not the requirement of law that the aggrieved person may either own the premises jointly or singly, or by tenancing it jointly or singly;
- (ii) the household may belong to a joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title, or interest in the shared household;
- (iii) the shared household may either be owned, or tenanted by the respondent singly or jointly.

²⁵ (2021) 1 SCC 414, by a Bench comprising of Hon’ble Ashok Bhushan, R. Subhash Reddy and M.R. Shah, JJ.

²⁶ (2007) 3 SCC 169 : (2007) 2 SCC (Cri) 56

The right to residence under Section 19 is, however, not an indefeasible right, especially when a daughter-in-law is claiming a right against aged parents-in-law. While granting relief under Section 12 of the DV Act, or in any civil proceeding, the court has to balance the rights between the aggrieved woman and the parents-in-law.

48. Section 20 provides for monetary relief to the aggrieved woman:

“20. Monetary reliefs.—(1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and such relief may include, but is not limited to—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.” (emphasis supplied)

Section 20(1)(d) provides that maintenance granted under the DV Act to an aggrieved woman and children, would be given effect to, in addition to an order of maintenance awarded under Section 125 CrPC, or any other law in force. Under sub-section (6) of Section 20, the Magistrate may direct the employer or debtor of the respondent, to directly pay the aggrieved person, or deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

49. Section 22 provides that the Magistrate may pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence perpetrated by the respondent. Section 23 provides that the Magistrate may grant an ex parte order, including an order under Section 20 for monetary relief. The Magistrate must be satisfied that the application filed by the aggrieved woman discloses that the respondent is committing, or has committed an act of domestic violence, or that there is a likelihood that the respondent may commit an act of domestic violence. In such a case, the Magistrate is empowered to pass an ex parte order on the basis of the affidavit of the aggrieved woman.

- 50.** Section 26 of the DV Act provides that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding before a civil court, Family Court or criminal court. Sub-section (2) of Section 26 provides that the relief mentioned in sub-section (1) may be sought in addition to, and along with any other relief that the aggrieved person may seek in a suit or legal proceeding before a civil or criminal court. Section 26(3) provides that in case any relief has been obtained by the aggrieved person in any proceeding other than proceedings under this Act, the aggrieved woman would be bound to inform the Magistrate of the grant of such relief.

51. Section 36 provides that the DV Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

2. Conflicting judgments on overlapping jurisdiction

- 52.** Some High Courts have taken the view that since each proceeding is distinct and independent of the other, maintenance granted in one proceeding cannot be adjusted or set off in the other. For instance, in *Ashok Singh Pal v. Manjulata*²⁷ the Madhya Pradesh High Court held that the remedies available to an aggrieved person under Section 24 of the HMA is independent of Section 125 CrPC. In an application filed by the husband for adjustment of the amounts awarded in the two proceedings, it was held that the question as to whether adjustment is to be granted, is a matter of judicial discretion to be exercised by the court. There is nothing to suggest as a thumb rule which lays down as a mandatory requirement that adjustment or deduction of maintenance awarded under Section 125 CrPC must be off-set from the amount awarded under Section 24 of the HMA, or vice versa. A similar view was taken by another Single Judge of the Madhya Pradesh High Court in *Mohan Swaroop Chauhan v. Mohini*²⁸. Similarly, the Calcutta High Court in *Sujit Adhikari v. Tulika Adhikari*²⁹ held that adjustment is not a rule. It was held that the quantum of maintenance determined by the Court under HMA is required to be added to the quantum of maintenance under Section 125 CrPC.

- 53.** A similar view has been taken in *Chandra Mohan Das v. Tapati Das*³⁰, wherein a challenge was made on the point that the Court ought to have adjusted the amount awarded in a proceeding under Section 125 CrPC, while determining the maintenance to be awarded under Section 24 of the HMA, 1955. It was held that the quantum of maintenance determined under Section 24 of the HMA was to be paid in addition to the maintenance awarded in a proceeding under Section 125 CrPC.

- 54.** On the other hand, the Bombay and Delhi High Courts, have held that in case of parallel proceedings, adjustment or set-off must take place. The Bombay High Court in a well-reasoned judgment delivered in *Vishal v. Aparna*³¹, has taken the correct view. The Court was considering the issue whether interim

²⁷ 2008 SCC OnLine MP 18 : AIR 2008 MP 139

²⁸ 2015 SCC OnLine MP 7427 : (2016) 2 MP LJ 179

²⁹ 2017 SCC OnLine Cal 15484 : (2018) 2 CHN 129

³⁰ 2015 SCC OnLine Cal 9554

³¹ 2018 SCC OnLine Bom 1207

monthly maintenance awarded under Section 23 read with Section 20(1)(d) of the DV Act could be adjusted against the maintenance awarded under Section 125 CrPC. The Family Court held that the order passed under the DV Act and the CrPC were both independent proceedings, and adjustment was not permissible. The Bombay High Court set aside the judgment of the Family Court, and held that Section 20(1)(d) of the DV Act makes it clear that the maintenance granted under this Act, would be in addition to an order of maintenance under Section 125 CrPC, and any other law for the time being in force. Sub-section (3) of Section 26 of the DV Act enjoins upon the aggrieved person to inform the Magistrate, if she has obtained any relief available under Sections 18, 19, 20, 21 and 22, in any other legal proceeding filed by her, whether before a civil court, Family Court, or criminal court. The object being that while granting relief under the DV Act, the Magistrate shall take into account and consider if any similar relief has been obtained by the aggrieved person. Even though proceedings under the DV Act may be an independent proceeding, the Magistrate cannot ignore the maintenance awarded in any other legal proceedings, while determining whether over and above the maintenance already awarded, any further amount was required to be granted for reasons to be recorded in writing. The Court observed: (*Vishal case*³¹, SCC OnLine Bom para 18)

“18. What I intend to emphasise is the fact that the adjustment is permissible and the adjustment can be allowed of the lower amount against the higher amount. *Though the wife can simultaneously claim maintenance under the different enactments, it does not in any way mean that the husband can be made liable to pay the maintenance awarded in each of the said proceedings.*” (emphasis supplied)

It was held that while determining the quantum of maintenance awarded under Section 125 CrPC, the Magistrate would take into consideration the interim maintenance awarded to the aggrieved woman under the DV Act.

55. The issue of overlapping jurisdictions under the HMA and the DV Act or CrPC came up for consideration before a Division Bench of the Delhi High Court in *R.D. v. B.D.*³² wherein the Court held that maintenance granted to an aggrieved person under the DV Act, would be in addition to an order of maintenance under Section 125 CrPC, or under the HMA. The legislative mandate envisages grant of maintenance to the wife under various statutes. It was not the intention of the legislature that once an order is passed in either of the maintenance proceedings, the order would debar re-adjudication of the issue of maintenance in any other proceeding. In paras 16 and 17 of the judgment, it was observed that: (SCC OnLine Del)

“16. A conjoint reading of the aforesaid Sections 20, 26 and 36 of the DV Act would clearly establish that the provisions of the DV Act dealing with maintenance are supplementary to the provisions of other laws and

³¹ *Vishal v. Aparna*, 2018 SCC OnLine Bom 1207

³² 2019 SCC OnLine Del 9526 : (2019) 7 AD 466

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a therefore maintenance can be granted to the aggrieved person(s) under the DV Act which would also be in addition to any order of maintenance arising out of Section 125 CrPC.

b 17. On the converse, if any order is passed by the Family Court under Section 24 of the HMA, the same would not debar the Court in the proceedings arising out of the DV Act or proceedings under Section 125 CrPC instituted by the wife/aggrieved person claiming maintenance. However, it cannot be laid down as a proposition of law that once an order of maintenance has been passed by any court then the same cannot be re-adjudicated upon by any other court. The legislative mandate envisages grant of maintenance to the wife under various statutes such as HMA, Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'HAMA'), Section 125 CrPC as well as Section 20 of the DV Act. As such various statutes have been enacted to provide for the maintenance to the wife and it is nowhere the intention of the legislature that once any order is passed in either of the proceedings, the said order would debar re-adjudication of the issue of maintenance in any other court." (emphasis supplied)

d The Court held that under Section 20(1)(d) of the DV Act, maintenance awarded to the aggrieved woman under the DV Act is in addition to an order of maintenance provided under Section 125 CrPC. The grant of maintenance under the DV Act would not be a bar to seek maintenance under Section 24 of the HMA.

e 56. Similarly, in Tanushree v. A.S. Moorthy³³ the Delhi High Court was considering a case where the Magistrate's Court had sine die adjourned the proceedings under Section 125 CrPC on the ground that parallel proceedings for maintenance under the DV Act were pending. In an appeal filed by the wife before the High Court, it was held that a reading of Section 20(1)(d) of the DV Act indicates that while considering an application under Section 12 of the DV Act, the Court would take into account an order of maintenance passed under Section 125 CrPC, or any other law for the time being in force. The mere fact that two proceedings were initiated by a party, would not imply that one would have to be adjourned sine die. There is a distinction in the scope and power exercised by the Magistrate under Section 125 CrPC and the DV Act. With respect to the overlap in both statutes, the Court held: (SCC OnLine Del para 5)

g "5. Reading of Section 20(1)(d) of the DV Act further shows that the two proceedings are independent of each other and have different scope, though there is an overlap. Insofar as the overlap is concerned, law has catered for that eventuality and laid down that at the time of consideration of an application for grant of maintenance under Section 12 of the DV Act, the maintenance fixed under Section 125 CrPC shall be taken into account." (emphasis supplied)

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57. The issue whether maintenance under Section 125 CrPC could be awarded by the Magistrate, after permanent alimony was granted to the wife in the divorce proceedings, came up for consideration before the Supreme Court in *Rakesh Malhotra v. Krishna Malhotra*³⁴. The Court held that once an order for permanent alimony was passed, the same could be modified by the same court by exercising its power under Section 25(2) of the HMA. The Court held that: (SCC OnLine SC para 16)

“16. Since Parliament has empowered the Court under Section 25(2) of the Act and kept a remedy intact and made available to the party concerned seeking modification, the logical sequitur would be that the remedy so prescribed ought to be exercised rather than creating multiple channels of remedy seeking maintenance. One can understand the situation where considering the exigencies of the situation and urgency in the matter, a wife initially prefers an application under Section 125 of the Code to secure maintenance in order to sustain herself. In such matters the wife would certainly be entitled to have a full-fledged adjudication in the form of any challenge raised before a competent court either under the Act or similar such enactments. But the reverse cannot be the accepted norm.”

The Court directed that the application under Section 125 CrPC be treated as an application under Section 25(2) of the HMA and be disposed of accordingly.

58. In *Nagendrappa Natikar v. Neelamma*³⁵ this Court considered a case where the wife instituted a suit under Section 18 of the HAMA, after signing a consent letter in proceedings under Section 125 CrPC, stating that she would not make any further claims for maintenance against the husband. It was held that the proceedings under Section 125 CrPC were summary in nature, and were intended to provide a speedy remedy to the wife. Any order passed under Section 125 CrPC by compromise or otherwise would not foreclose the remedy under Section 18 of the HAMA.

59. In *Sudeep Chaudhary v. Radha Chaudhary*³⁶ the Supreme Court directed adjustment in a case where the wife had filed an application under Section 125 CrPC, and under HMA. In the Section 125 proceedings, she had obtained an order of maintenance. Subsequently, in proceedings under the HMA, the wife sought alimony. Since the husband failed to pay maintenance awarded, the wife initiated recovery proceedings. The Supreme Court held that the maintenance awarded under Section 125 CrPC must be adjusted against the amount awarded in the matrimonial proceedings under HMA, and was not to be given over and above the same.

3. Directions on overlapping jurisdictions

60. It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the DV Act and Section 125 CrPC, or under HMA. It would, however,

³⁴ 2020 SCC OnLine SC 239

³⁵ (2014) 14 SCC 452 : (2015) 1 SCC (Civ) 346 : (2015) 1 SCC (Cri) 407

³⁶ (1997) 11 SCC 286 : 1998 SCC (Cri) 160

- be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. If
- a* maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/Family Court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.
- b* **61.** To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the
- c* previous proceeding requires any modification or variation, the party would be required to move the court concerned in the previous proceeding.

II. Payment of Interim Maintenance

- 62.** The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24-9-2001), and the third proviso to Section 125 CrPC (inserted vide
- d* Act 50 of 2001 w.e.f. 24-9-2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that applications remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous
- e* docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.

- 63.** At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guesswork or rough estimation takes place,
- f* so as to make a prima facie assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.
- g* It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependent wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

- 64.** In the first instance, the Family Court in compliance with the mandate
- h* of Section 9 of the Family Courts Act, 1984 must make an endeavour for settlement of the disputes. For this, Section 6 provides that the State

Government shall, in consultation with the High Court, make provision for counsellors to assist a Family Court in the discharge of its functions. Given the large and growing percentage of matrimonial litigation, it has become necessary that the provisions of Sections 5 and 6 of the Family Courts Act are given effect to, by providing for the appointment of marriage counsellors in every Family Court, which would help in the process of settlement. If the proceedings for settlement are unsuccessful, the Family Court would proceed with the matter on merits.

65. The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, along with an Affidavit of Disclosure of Assets and Liabilities before the court concerned, as a mandatory requirement. On the basis of the pleadings filed by both parties and the Affidavits of Disclosure, the court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.

66. The Delhi High Court in a series of judgments beginning with *Puneet Kaur v. Inderjit Singh Sawhney*³⁷ and followed in *Kusum Sharma v. Mahinder Kumar Sharma*³⁸ ("*Kusum Sharma I*") directed that applications for maintenance under the HMA, HAMA, the DV Act, and the CrPC be accompanied with an affidavit of assets, income and expenditure as prescribed. In *Kusum Sharma* 2³⁹, the Court framed a format of affidavit of assets, income and expenditure to be filed by both parties at the threshold of a matrimonial litigation. This procedure was extended to maintenance proceedings under the Special Marriage Act and the Divorce Act, 1869. In *Kusum Sharma* 3⁴⁰ the Delhi High Court modified the format of the affidavit, and extended it to maintenance proceedings under the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956. In *Kusum Sharma* 4⁴¹ the Court took notice that the filing of affidavits along with pleadings gave an unfair advantage to the party who files the affidavit subsequently. In this judgment, it was clarified that the affidavit must be filed simultaneously by both parties. In *Kusum Sharma* 5⁴² the Court consolidated the format of the affidavits in the previous judgments, and directed that the same be filed in maintenance proceedings.

67. Given the vastly divergent demographic profile of our country, which comprises of metropolitan cities, urban areas, rural areas, tribal areas, etc. it was considered appropriate to elicit responses from the various State Legal Services Authorities ("SLSAs"). This Court vide its order dated 17-12-2019⁵ requested the National Legal Services Authority ("NALSA") to submit a report of the

37. 2011 SCC OnLine Del 3841 : ILR (2012) 1 Del 73

38. 2014 SCC OnLine Del 7627 : (2014) 214 DLT 493

39. *Kusum Sharma v. Mahinder Kumar Sharma*, 2015 SCC OnLine Del 6793 : (2015) 217 DLT 706

40. *Kusum Sharma v. Mahinder Kumar Sharma*, 2017 SCC OnLine Del 11796 : (2017) 241 DLT 252

41. *Kusum Sharma v. Mahinder Kumar Sharma*, 2017 SCC OnLine Del 12534 : (2018) 246 DLT 1

42. *Kusum Sharma v. Mahinder Kumar Sharma*, 2020 SCC OnLine Del 931

5. *Rajesh v. Neha*, 2019 SCC OnLine SC 1918

suggestions received from the SLSAs for framing guidelines on the Affidavit of Disclosure of the Assets and Liabilities to be filed by the parties.

a **68.** The NALSA submitted a comprehensive report dated 17-2-2020 containing suggestions from all the State Legal Services Authorities throughout the country. We find the various suggestions made by the SLSAs to be of great assistance in finalising the Affidavit of Disclosure which can be used by the Family Courts for determining the quantum of maintenance to be paid.

b **69.** Keeping in mind the varied landscape of the country, and the recommendations made by the SLSAs, it was submitted that a simplified Affidavit of Disclosure may be framed to expedite the process of determining the quantum of maintenance.

c **70.** We feel that the affidavit to be filed by parties residing in urban areas, would require to be entirely different from the one applicable to rural areas, or tribal areas. For this purpose, a comprehensive Affidavit of Disclosure of Assets and Liabilities is being attached as *Enclosures I* and II** to this judgment.

d **71.** We have been informed by the Meghalaya State Legal Services Authority that the State of Meghalaya has a predominantly tribal population, which follows a matrilineal system of society. The population is comprised of three tribes viz. the Khasis, Jaintia and Garo tribes. In Meghalaya, the youngest daughter is the custodian of the property, and takes important decisions relating to family property in consultation with her maternal uncle. The majority of the population is employed in the unorganised sector, such as agriculture. Under Section 10(26) of the Income Tax Act, 1961, the tribals residing in this State are exempted from payment of income tax. The Meghalaya State Legal Services Authority has suggested that the declaration in Meghalaya be made in the format enclosed with this judgment as *Enclosure III*#*.

e **72.** Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

f **72.1. (a)** The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

g **72.2. (b)** The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of

h * Set out at pp. 384 et. seq., below.

** Set out at pp. 389-390, below.

*# Set out at pp. 390 et. seq. below.

Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings⁴³. On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record;

72.4. (d) The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof.

72.6. (f) If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections ("EWS"), or are living below the poverty line ("BPL"), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

72.11. (k) A professional Marriage Counsellor must be made available in every Family Court.

⁴³ *Kaushalya v. Mukesh Jain*, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915

Permanent alimony

- 73.** Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the court concerned, for fixing the permanent alimony payable to the spouse.

- 74.** In contemporary society, where several marriages do not last for a reasonable length of time, it may be inequitable to direct the contesting spouse to pay permanent alimony to the applicant for the rest of her life. The duration of the marriage would be a relevant factor to be taken into consideration for determining the permanent alimony to be paid.

75. Provision for grant of reasonable expenses for the marriage of children must be made at the time of determining permanent alimony, where the custody is with the wife. The expenses would be determined by taking into account the financial position of the husband and the customs of the family.

- 76.** If there are any trust funds/investments created by any spouse/grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

III. Criteria for determining quantum of maintenance

- 77.** The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

- 78.** The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife.⁴⁴

- 79.** In *Manish Jain v. Akanksha Jain*⁴⁵ this Court held that the financial position of the parents of the applicant wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the court should mould the claim for maintenance based on various factors brought before it.

⁴⁴ Refer to *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7; Refer to *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290

⁴⁵ (2017) 15 SCC 801 : (2018) 2 SCC (Civ) 712

80. On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications.⁴⁶

81. A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her matrimonial home.⁴⁷ The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

82. Section 23 of the HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of the HAMA provides the following factors which may be taken into consideration: (i) position and status of the parties, (ii) reasonable wants of the claimant, (iii) if the petitioner/claimant is living separately, the justification for the same, (iv) value of the claimant's property and any income derived from such property, (v) income from claimant's own earning or from any other source.

83. Section 20(2) of the DV Act provides that the monetary relief granted to the aggrieved woman and/or the children must be adequate, fair, reasonable, and consistent with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

84. The Delhi High Court in *Bharat Hegde v. Saroj Hegde*⁴⁸ laid down the following factors to be considered for determining maintenance: (SCC OnLine Del para 8)

- “1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.

⁴⁶ *Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339

⁴⁷ *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356

⁴⁸ 2007 SCC OnLine Del 622 : (2007) 140 DLT 16

6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment, etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guesswork is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.
11. The amount awarded under Section 125 CrPC is adjustable against the amount awarded under Section 24 of the Act."

85. Apart from the aforesaid factors enumerated hereinabove, certain additional factors would also be relevant for determining the quantum of maintenance payable.

(a) Age and employment of parties

- 86.** In a marriage of long duration, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and retrain herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependent wife to get an easy entry into the workforce after a break of several years.

(b) Right to residence

- 87.** Section 17 of the DV Act grants an aggrieved woman the right to live in the "shared household". Section 2(s) defines "shared household" to include the household where the aggrieved woman lived at any stage of the domestic relationship; or the household owned and rented jointly or singly by both, or singly by either of the spouses; or a joint family house, of which the respondent is a member.

- 88.** The right of a woman to reside in a "shared household" defined under Section 2(s) entitles the aggrieved woman for right of residence in the shared household, irrespective of her having any legal interest in the same. This Court in *Satish Chander Ahuja v. Sneha Ahuja*²⁵ held that "shared household" referred to in Section 2(s) is the shared household of the aggrieved person where she was living at the time when the application was filed, or at any stage lived in a domestic relationship. The living of the aggrieved woman in the shared household must have a degree of permanence. A mere fleeting or

²⁵ (2021) 1 SCC 414, by a Bench comprising of Hon'ble Ashok Bhushan, R. Subhash Reddy and M.R. Shah, JJ.

casual living at different places would not constitute a “shared household”. It is important to consider the intention of the parties, nature of living, and nature of the household, to determine whether the premises is a “shared household”. Section 2(s) read with Sections 17 and 19 of the DV Act entitles a woman to the right of residence in a shared household, irrespective of her having any legal interest in the same. There is no requirement of law that the husband should be a member of the joint family, or that the household must belong to the joint family, in which he or the aggrieved woman has any right, title or interest. The shared household may not necessarily be owned or tenanted by the husband singly or jointly.

89. Section 19(1)(f) of the DV Act provides that the Magistrate may pass a residence order inter alia directing the respondent to secure the same level of alternate accommodation for the aggrieved woman as enjoyed by her in the shared household. While passing such an order, the Magistrate may direct the respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties.

(c) Where wife is earning some income

90. The courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The courts have provided guidance on this issue in the following judgments:

90.1. In *Shailja v. Khobbanna*⁴⁹, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home.⁴⁷ Sustenance does not mean, and cannot be allowed to mean mere survival.⁵⁰

90.2. In *Sunita Kachwaha v. Anil Kachwaha*⁵¹, the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

90.3. The Bombay High Court in *Sanjay Damodar Kale v. Kalyani Sanjay Kale*⁵² while relying upon the judgment in *Sunita Kachwaha*⁵¹, held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

⁴⁹ (2018) 12 SCC 199 : (2018) 5 SCC (Civ) 308; See also the decision of the Karnataka High Court in *P. Suresh v. S. Deepa*, 2016 SCC OnLine Kar 8848 : 2016 Cri LJ 4794 (Kar)

⁴⁷ *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 : (2008) 1 SCC (Civ) 547 : (2008) 1 SCC (Cri) 356

⁵⁰ *Vipul Lakhanpal v. Pooja Sharma*, 2015 SCC OnLine HP 1252 : 2015 Cri LJ 3451

⁵¹ (2014) 16 SCC 715 : (2015) 3 SCC (Civ) 753 : (2015) 3 SCC (Cri) 589

⁵² 2020 SCC OnLine Bom 694

90.4. An able-bodied husband must be presumed to be capable of earning sufficient money to maintain his wife and children, and cannot contend that he is not in a position to earn sufficiently to maintain his family, as held by the Delhi High Court in *Chander Parkash v. Shila Rani*⁵³. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the court.

90.5. This Court in *Shamima Farooqui v. Shahid Khan*⁵⁴ cited the judgment in *Chander Parkash*⁵³ with approval, and held that the obligation of the husband to provide maintenance stands on a higher pedestal than the wife.

(d) Maintenance of minor children

91. The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.

(e) Serious disability or ill health

93. Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance.

IV. Date from which Maintenance to be Awarded

94. There is no provision in the HMA with respect to the date from which an order of maintenance may be made effective. Similarly, Section 12 of the DV Act, does not provide the date from which the maintenance is to be awarded. Section 125(2) CrPC is the only statutory provision which provides that the Magistrate may award maintenance either from the date of the order, or from the date of application.⁵⁵

95. In the absence of a uniform regime, there is a vast variance in the practice adopted by the Family Courts in the country, with respect to the date from which maintenance must be awarded. The divergent views taken by the Family Courts are: *first*, from the date on which the application for maintenance was filed; *second*, the date of the order granting maintenance; *third*, the date on which the summons was served upon the respondent.

⁵³ 1968 SCC OnLine Del 52 : AIR 1968 Del 174

⁵⁴ (2015) 5 SCC 705 : (2015) 3 SCC (Civ) 274 : (2015) 2 SCC (Cri) 785

⁵⁵ *K. Sivaram v. K. Mangalamba*, 1989 SCC OnLine AP 60 : (1989) 1 AP LJ 604

(a) From date of application

96. The view that maintenance ought to be granted from the date when the application was made, is based on the rationale that the primary object of maintenance laws is to protect a deserted wife and dependent children from destitution and vagrancy. If maintenance is not paid from the date of application, the party seeking maintenance would be deprived of sustenance, owing to the time taken for disposal of the application, which often runs into several years.

97. The Orissa High Court in *Susmita Mohanty v. Rabindra Nath Sahu*⁵⁶ held that the legislature intended to provide a summary, quick and comparatively inexpensive remedy to the neglected person. Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order.

98. In *Kanhu Charan Jena v. Nirmala Jena*⁵⁷, the Orissa High Court was considering an application under Section 125 CrPC, wherein it was held that even though the decision to award maintenance either from the date of application, or from the date of order, was within the discretion of the court, it would be appropriate to grant maintenance from the date of application. This was followed in *Arun Kumar Nayak v. Urmila Jena*⁵⁸, wherein it was reiterated that dependants were entitled to receive maintenance from the date of application.

99. The Madhya Pradesh High Court in *Krishna v. Dharam Raj*⁵⁹ held that a wife may set up a claim for maintenance to be granted from the date of application, and the husband may deny it. In such cases, the court may frame an issue, and decide the same based on evidence led by parties. The view that the “normal rule” was to grant maintenance from the date of order, and the exception was to grant maintenance from the date of application, would be to insert something more in Section 125(2) CrPC, which the legislature did not intend. Reasons must be recorded in both cases. i.e. when maintenance is awarded from the date of application, or when it is awarded from the date of order.

100. The law governing payment of maintenance under Section 125 CrPC from the date of application, was extended to HAMA by the Allahabad High Court in *Ganga Prasad Srivastava v. Addl. District Judge, Gonda*⁶⁰. The Court held that the date of application should always be regarded as the starting point for payment of maintenance. The Court was considering a suit for maintenance under Section 18 of the HAMA, wherein the Civil Judge directed

⁵⁶ (1996) 1 OLR 361

⁵⁷ 2000 SCC OnLine Ori 217 : 2001 Cri LJ 879

⁵⁸ 2010 SCC OnLine Ori 30 : (2010) 93 AIC 726

⁵⁹ 1991 SCC OnLine MP 6 : (1993) 2 MPJR 63

⁶⁰ 2019 SCC OnLine All 5428 : (2019) 6 ADJ 850

a that maintenance be paid from the date of judgment. The High Court held that the normal inference should be that the order of maintenance would be effective from the date of application. A party seeking maintenance would otherwise be deprived of maintenance due to the delay in disposal of the application, which may arise due to paucity of time of the court, or on account of the conduct of one of the parties. In this case, there was a delay of seven years in disposing of the suit, and the wife could not be made to starve till such time. The wife was held to be entitled to maintenance from the date of application/suit.

b **101.** The Delhi High Court in *Laylesh Shukla v. Rukmani*⁶¹ held that where the wife is unemployed and is incurring expenses towards maintaining herself and the minor child/children, she is entitled to receive maintenance from the date of application. Maintenance is awarded to a wife to overcome the financial crunch, which occurs on account of her separation from her husband. It is neither a matter of favour to the wife, nor any charity done by the husband.

c **(b) From the date of order**

d **102.** The second view that maintenance ought to be awarded from the date of order is based on the premise that the general rule is to award maintenance from the date of order, and grant of maintenance from the date of application must be the exception. The foundation of this view is based on the interpretation of Section 125(2) CrPC which provides:

“**125. (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 maintenance or interim maintenance and expenses of proceeding, as the case may be.” (emphasis supplied)

e The words “or, if so ordered” in Section 125 have been interpreted to mean that where the court is awarding maintenance from the date of application, special reasons ought to be recorded.⁶²

f **103.** In *Bina Devi v. State of U.P.*⁶² the Allahabad High Court on an interpretation of Section 125(2) CrPC held that when maintenance is directed to be paid from the date of application, the court must record reasons. If the order is silent, it will be effective from the date of the order, for which reasons need not be recorded. The Court held that Section 125(2) CrPC is prima facie clear that maintenance shall be payable from the date of the order.

g **104.** The Madhya Pradesh High Court in *Amit Verma v. Sangeeta Verma*⁶³ directed that maintenance ought to be granted from the date of the order.

(c) From the date of service of summons

105. The third view followed by some courts is that maintenance ought to be granted from the date of service of summons upon the respondent.

h ⁶¹ 2019 SCC OnLine Del 11709

⁶² *Bina Devi v. State of U.P.*, 2010 SCC OnLine All 236 : (2010) 69 ACC 19

⁶³ 2020 SCC OnLine MP 2657

106. The Kerala High Court in *S. Radhakumari v. K.M.K. Nair*⁶⁴ was considering an application for interim maintenance preferred by the wife in divorce proceedings filed by the husband. The High Court held that maintenance must be awarded to the wife from the date on which summons were served in the main divorce petition. The Court relied upon the judgment of the Calcutta High Court in *Samir Kr. Banerjee v. Sujata Banerjee*⁶⁵ and held that Section 24 of the HMA does not contain any provision that maintenance must be awarded from a specific date. The court may, in exercise of its discretion, award maintenance from the date of service of summons.

107. The Orissa High Court in *Gouri Das v. Pradyumna Kumar Das*⁶⁶ was considering an application for interim maintenance filed under Section 24 HMA by the wife, in a divorce petition instituted by the husband. The Court held that the ordinary rule is to award maintenance from the date of service of summons. It was held that in cases where the applicant in the maintenance petition is also the petitioner in the divorce petition, maintenance becomes payable from the date when summons is served upon the respondent in the main proceeding.

108. In *Kalpana Das v. Sarat Kumar Das*⁶⁷ the Orissa High Court held that the wife was entitled to maintenance from the date when the husband entered appearance. The Court was considering an application for interim maintenance under Section 24 HMA in a petition for restitution of conjugal rights filed by the wife. The Family Court awarded interim maintenance to the wife and minor child from the date of the order. In an appeal filed by the wife and minor child seeking maintenance from the date of application, the High Court held that the Family Court had failed to assign any reasons in support of its order, and directed: (SCC OnLine Ori para 8)

“8. ... The learned Judge, Family Court has not assigned any reason as to why he passed the order of interim maintenance w.e.f. the date of order. When admittedly the parties are living separately and prima facie it appears that the petitioners have no independent source of income, therefore, *in our view order should have been passed for payment of interim maintenance from the date of appearance of the opposite party-husband.*” (emphasis supplied)

Discussion and Directions

109. The judgments hereinabove reveal the divergent views of different High Courts on the date from which maintenance must be awarded. Even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in Section 125(2) CrPC, it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 CrPC. In the practical working of the

⁶⁴ 1982 SCC OnLine Ker 51 : AIR 1983 Ker 139

⁶⁵ 1965 SCC OnLine Cal 196 : (1965-66) 70 CWN 633

⁶⁶ (1986) 2 OLR 44

⁶⁷ 2009 SCC OnLine Ori 21 : AIR 2009 Ori 133

provisions relating to maintenance, we find that there is significant delay in disposal of the applications for interim maintenance for years on end. It would therefore be in the interests of justice and fair play that maintenance is awarded from the date of the application.

110. In *Shail Kumari Devi v. Krishan Bhagwan Pathak*⁶⁸, this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In *Bhuwan Mohan Singh v. Meena*⁶⁹, this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.

111. The rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations, so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse hamper their capacity to be effectively represented before the court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the court concerned.

112. In *Badshah v. Urmila Badshah Godse*⁷⁰, the Supreme Court was considering the interpretation of Section 125 CrPC. The Court held: (SCC p. 196, para 13)

“13.3. ... purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the application of a destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalised sections of the society. The purpose is to achieve “social justice” which is the constitutional vision, enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly signals that we have chosen the democratic path under the rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the courts to advance the cause of social justice. While giving interpretation to a particular provision, the court is supposed to bridge the gap between the law and society.” (emphasis supplied)

113. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made

⁶⁸ (2008) 9 SCC 632 : (2008) 3 SCC (Cri) 839

⁶⁹ (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200

⁷⁰ (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51

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before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.

V. Enforcement of orders of maintenance

114. Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. The Bombay High Court in *Sushila Viresh Chhadva v. Viresh Nagshi Chhadva*⁷¹ held that: (SCC OnLine Bom para 7)

“7. ... The direction of interim alimony and expenses of litigation under Section 24 is one of urgency and it must be decided as soon as it is raised and ... the law takes care that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds.”

115. An application for execution of an order of maintenance can be filed under the following provisions:

(a) Section 28-A of the Hindu Marriage Act, 1955 read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an order passed under Section 24 of the Hindu Marriage Act (before the Family Court);

(b) Section 20(6) of the DV Act (before the Judicial Magistrate); and

(c) Section 128 CrPC before the Magistrate's Court.

116. Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with the CPC/CrPC.

117. Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.

Striking off the Defence

118. Some Family Courts have passed orders for striking off the defence of the respondent in case of non-payment of maintenance, so as to facilitate speedy disposal of the maintenance petition. In *Kaushalya v. Mukesh Jain*⁴³, the Supreme Court allowed a Family Court to strike off the defence of the respondent, in case of non-payment of maintenance in accordance with the interim order passed.

119. The Punjab and Haryana High Court in *Rani v. Parkash Singh*⁷² was considering a case where the husband failed to comply with the maintenance

71 1995 SCC OnLine Bom 315 : AIR 1996 Bom 94

43 (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915

72 1996 SCC OnLine P&H 52 : AIR 1996 P&H 175

order, despite several notices, for a period of over two years. The Court taking note of the power to strike off the defence of the respondent, held that: (SCC

a OnLine P&H para 7)

“7. ... Law is not that powerless as not to bring the husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to wife, his defence be struck out.”

b 120. The Punjab and Haryana High Court in *Mohinder Verma v. Sapna*⁷³ discussed the issue of striking off the defence in the following words: (SCC OnLine P&H para 8)

c “8. Section 24 of the Act empowers the matrimonial court to award maintenance pendente lite and also litigation expenses to a needy and indigent spouse so that the proceedings can be conducted without any hardship on his or her part. The proceedings under this section are summary in nature and confer a substantial right on the applicant during the pendency of the proceedings. *Where this amount is not paid to the applicant, then the very object and purpose of this provision stands defeated. No doubt, remedy of execution of decree or order passed by the matrimonial court is available under Section 28-A of the Act, but the same would not be a bar to striking off the defence of the spouse who violates the interim order of maintenance and litigation expenses passed by the said court.* In other words, the striking off the defence of the spouse not honouring the court’s interim order is the instant relief to the needy one instead of waiting endlessly till its execution under Section 28-A of the Act. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time consuming execution proceedings for realising the amount. Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure. Needless to say, the remedy under Section 28-A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off.” (emphasis supplied)

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h 121. The Delhi High Court in *Satish Kumar v. Meena*⁷⁴ held that the Family Court had inherent powers to strike off the defence of the respondent, to ensure that no abuse of process of the court takes place.

73 2014 SCC OnLine P&H 25147

74 2001 SCC OnLine Del 817 : (2001) 60 DRJ 246

122. The Delhi High Court in *Santosh Sehgal v. Murari Lal Sehgal*⁷⁵, framed the following issue for consideration: (SCC OnLine Del para 3)

“3. ... whether the appeal against the decree of divorce filed by the appellent wife can be allowed straightaway without hearing the respondent husband in the event of his failing to pay interim maintenance and litigation expenses granted to the wife during the pendency of the appeal.”

The reference was answered as follows: (*Santosh Sehgal case*⁷⁵, SCC OnLine Del para 5)

“5. The reference to the portion of the judgment in *Rani case*⁷² extracted hereinabove would show that the Punjab and Haryana High Court and the Orissa High Court have taken a unanimous view that in case the husband commits default in payment of interim maintenance to his wife and children then he is not entitled to any matrimonial relief in proceedings by or against him. The view taken by the Punjab and Haryana High Court in *Rani case*⁷² has been followed by a Single Judge of this Court in *Satish Kumar v. Meena*⁷⁴. We tend to agree with this view as it is in consonance with the first principle of law. We are of the view that when a husband is negligent and does not pay maintenance to his wife as awarded by the Court, then how such a person is entitled to the relief claimed by him in the matrimonial proceedings. We have no hesitation in holding that in case the husband fails to pay maintenance and litigation expenses to his wife granted by the Court during the pendency of the appeal, then the appeal filed by the wife against the decree of divorce granted by the trial court in favour of the husband has to be allowed. Hence the question referred to us for decision is answered in the affirmative.”

The Court concluded that if there was non-payment of interim maintenance, the defence of the respondent is liable to be struck off, and the appeal filed by the appellent wife can be allowed, without hearing the respondent.

123. The Punjab and Haryana High Court in *Gurvinder Singh v. Murti*⁷⁶ was considering a case where the trial court struck off the defence of the husband for non-payment of ad interim maintenance. The High Court set aside the order of the trial court, and held that instead of following the correct procedure for recovery of interim maintenance as provided under Section 125(3) or Section 421 CrPC the trial court erred in striking off the defence of the husband. The error of the court did not assist in recovery of interim maintenance, but rather prolonged the litigation between the parties.

124. The issue whether defence can be struck off in proceedings under Section 125 CrPC came up before the Madhya Pradesh High Court in

⁷⁵ 2006 SCC OnLine Del 585 : AIR 2007 Del 210

⁷² *Rani v. Parkash Singh*, 1996 SCC OnLine P&H 52 : AIR 1996 P&H 175

⁷⁴ 2001 SCC OnLine Del 817 : (2001) 60 DRJ 246

⁷⁶ 1990 SCC OnLine P&H 35 : (1990) 1 DMC 559

- Venkateshwar Dwivedi v. Ruchi Dwivedi*⁷⁷. The Court held that neither Section 125(3) CrPC nor Section 10 of the Family Courts Act either expressly or by necessary implication empower the Magistrate or Family Court to strike off the defence. A statutory remedy for recovery of maintenance was available, and the power to strike off defence does not exist in a proceeding under Section 125 CrPC. Such power cannot be presumed to exist as an inherent or implied power. The Court placed reliance on the judgment of the Kerala High Court in *Davis v. Thomas*⁷⁸, and held that the Magistrate does not possess the power to strike off the defence for failure to pay interim maintenance.

Discussion and Directions on Enforcement of orders of Maintenance

- 125.** The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

- 126.** Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife, and minor children. Contempt proceedings for wilful disobedience may be initiated before the appropriate court.

VI. Final Directions

127. In view of the foregoing discussion as contained in Part B — I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India.

(a) Issue of overlapping jurisdiction

128. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

- 128.1. (i)** Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding.

128.2. (ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding.

- 128.3. (iii)** If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done in the same proceeding.

⁷⁷ 2017 SCC OnLine MP 2065 : (2018) 2 DMC 103 (MP). The Karnataka High Court affirmed this view in *Ravindra Kumar v. Renuka*, 2009 SCC OnLine Kar 481.

⁷⁸ 2007 SCC OnLine Ker 358 : ILR (2007) 4 Ker 389. See also *Sakeer Hussain T.P. v. Naseera*, 2016 SCC OnLine Ker 23592 : ILR (2016) 4 Ker 917

(b) Payment of Interim Maintenance

129. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

130. For determining the quantum of maintenance payable to an applicant, the court shall take into account the criteria enumerated in Part B — III of the judgment. The aforesaid factors are however not exhaustive, and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

131. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B — IV above.

(e) Enforcement/Execution of orders of maintenance

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

133. Before we part with this judgment, we note our appreciation of the valuable assistance provided by the learned Amici Curiae Ms Anitha Shenoy and Mr Gopal Sankaranarayanan, Senior Advocates in this case.

134. A copy of this judgment be communicated by the Secretary General of this Court, to the Registrars of all High Courts, who would in turn circulate it to all the District Courts in the States. It shall be displayed on the website of all District Courts/Family Courts/Courts of Judicial Magistrates for awareness and implementation.

ENCLOSURE I

Affidavit of Assets and Liabilities for Non-Agrarian Deponents

I _____, d/o _____ or s/o _____, aged about _____ years, resident of _____, do hereby solemnly affirm and declare as under:

A. Personal Information

1. Name:
2. Age/Sex:
3. Qualifications (Educational and Professional):

- a 4. Whether the Applicant is staying in the matrimonial house/parental home/separate residence. Please provide the current residential address of matrimonial home or place of residence and details of ownership of residence, if owned by other family member.
5. Date of marriage:
6. Date of separation:
7. General monthly expenses of the Applicant (rent, household expenses, medical bills, transportation, etc.):
- b **B. Details of Legal Proceedings and Maintenance being paid**
 - c 1. Particulars of any ongoing or past legal proceedings with respect to maintenance or child support between the Applicant and Non-Applicant.
 2. Whether any maintenance has been awarded in any proceeding arising under the DV Act, CrPC, HMA, HAMA, etc.? If yes, provide details of the quantum of maintenance awarded in the proceedings.
 - d 3. If so, provide particulars thereof, along with a copy of the order(s) passed.
 4. Whether the order of maintenance passed in earlier proceedings has been complied with. If not, arrears of maintenance.
 - e 5. Whether any voluntary contribution towards maintenance has been made/will be made in the future? If yes, provide details of the same.
- C. Details of dependent family members**
 - f 1. Details of dependent family members, if any.
 - (a) Relationship with dependants:
 - (b) Age and sex of dependant(s):
 2. Disclose if any independent source(s) of income of the dependants, including interest income, assets, pension, tax liability on any such income and any other relevant details.
 3. The approximate expenses incurred on account of the dependant.
- D. Medical details if any, of the deponent and/or dependent family members**
 - g 1. Whether either party or child/children is suffering from any physical/mental disability, or any other serious ailment. If yes, produce medical records.
 2. Whether any dependent family member has serious disability, requiring continuous medical expenditure. If yes, produce disability certificate and approximate medical expenditure incurred on such medical treatment.
 - h 3. Whether either party or child/children or any other dependent family member is suffering from life-threatening diseases, which would entail expensive and regular medical expenditure? If yes, provide details of the same along with summary of previous details of hospitalisation/medical expenses incurred.

E. Details of children of the parties

1. Number of children from the existing marriage/marital relationship/previous marriage. a
2. Name and age of children.
3. Details of the parent who has the custody of the children.
4. Expenditure for maintenance of dependent children.
 - (a) Towards food, clothing and medical expenses.
 - (b) Towards expenses for education, and a summary of general expenses. b
 - (c) Towards expenses, if any, of any extra educational, vocational or professional/educational course, specialised training or special skills programme of dependent children. c
 - (d) Details of any loan, mortgage, charge incurred or instalment plan (being paid or payable), if any, on account of any educational expenses of children. d
5. Whether any voluntary contribution by either of the parties is being made towards these educational expenses? If yes, provide details of the same. Also provide an estimate of any additional contribution that may be required. e
6. Whether any financial support is being provided by a third party for the educational expenses of the children? f

F. Details of Income of the Deponent

1. Name of employer:
2. Designation:
3. Monthly income:
4. If engaged in government service, furnish latest salary certificates or current pay slips or proof of deposit in bank account, if being remitted directly by employer. g
5. If engaged in the private sector, furnish a certificate provided by the employer stating the designation and gross monthly income of such person, and Form 16 for the relevant period of current employment.
6. If any perquisites, benefits, house rent allowance, travel allowance, dearness allowance or any other service benefit is being provided by the employer during the course of current employment. h
7. Whether assessed to income tax?

If yes, submit copies of the Income Tax Returns for the periods given below:

 - (i) One year prior to marriage
 - (ii) One year prior to separation g
 - (iii) At the time when the application for maintenance is filed
8. Income from other sources, such as rent, interest, shares, dividends, capital gains, FDRs, Post office deposits, mutual funds, stocks, debentures, agriculture, or business, if any, along with TDS in respect of any such income. h
9. Furnish copies of bank statement of all accounts for the last 3 years.

G. Assets (movable and immovable) owned by the Deponent

1. Self-acquired property, if any:
- a* 2. Properties jointly owned by the parties after marriage:
3. Share in any ancestral property:
4. Other joint properties of the parties (accounts/investments/FDR/mutual funds, stocks, debentures, etc.), their value and status of possession:
- b* 5. Status of possession of immovable property and details of rent, if leased:
6. Details of loans taken or given by the Deponent:
7. Brief description of jewellery and ornaments of parties acquired during/after marriage:
8. Details of transfer deeds or transactions of alienation of properties previously owned by the applicant, executed during the subsistence of the marriage. Also provide brief reasons for such sale or transaction, if any.
- c*

H. Details of Liabilities of the Deponent

1. Loans, liabilities, mortgage, or charge outstanding against the Deponent, if any.
- d* 2. Details of any EMIs being paid.
3. Date and purpose of taking loan or incurring any such liability:
4. Actual amount borrowed, if any, and the amount paid up to date of filing the Affidavit:
5. Any other information which would be relevant to describe current liabilities of the Deponent.

I. Self-employed persons/Professionals/Business Persons/Entrepreneur

1. Brief description of nature of business/profession/vocation/self-employed/work activity.
2. Whether the business/profession/self-employment is carried on as an individual, sole proprietorship concern, partnership concern, LLP, company or association of persons, HUF, joint family business or any other form? Give particulars of Applicant's share in the partnership/business/professional association/self-employment. In case of partnership, specify the share in the profit/losses of the partnership.
- f* 3. Net Income from the business/profession/partnership/self-employment.
- g* 4. Business/partnership/self-employment liabilities, if any, in case of such activity.
5. In case of business of company, provide brief details of last audited balance sheet to indicate profit and loss of the company in which such party is in business in the company.
- h* 6. In case of a partnership firm, provide details of the filings of the last Income Tax Return of partnership.

7. In case of self-employed individual, provide the filings of the last Income Tax Return from any such professional/business/vocational activity. a

J. Information provided by the Deponent with respect to the income, assets and liabilities of the other Spouse

1. Educational and professional qualifications of the other spouse;
2. Whether spouse is earning? If so, give particulars of the occupation and income of the spouse.
3. If not, whether he/she is staying in his/her own accommodation, or in a rented accommodation or in accommodation provided by employer/business/partnership? b
4. Particulars of assets and liabilities of spouse as known to the deponent, along with any supporting documents.

K. Details of Applicant or the other Spouse, in case parties are Non-Resident Indians, Overseas Citizens of India, Foreign Nationals or Persons living abroad outside India c

1. Details of Citizenship, Nationality and current place of residence, if the Applicant or other spouse is residing abroad outside India, temporarily or permanently.
2. Details of current employment and latest income in foreign currency of such applicant/spouse, duly supported by relevant documentation of employment and income from such foreign employer or overseas institution by way of employment letter or testimonial from foreign employer or overseas institution or latest relevant bank statement. d
3. Details of household and other expenditure of such applicant/spouse in foreign jurisdiction. e
4. Details of tax liability of applicant/other spouse in foreign jurisdiction.
5. Details of income of applicant/other spouse from other sources in India/foreign jurisdiction.
6. Details of expenses incurred or contribution made on account of spousal maintenance, child support or any other educational expenses, medical treatment of spouse or children. f
7. Any other relevant detail of expenses or liabilities, not covered under any of the above headings and any other liabilities to any other dependent family members in India or abroad.

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit. g
2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit. h

- a* 3. I understand that any false statement in this affidavit, apart from being contempt of court, may also constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment up to seven years and fine, and Section 209 of the Indian Penal Code punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Indian Penal Code, 1860.

DEPONENT

b **Verification**

- c* Verified at ____ on this ____ day of ____ that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom, whereas the contents of the above affidavit relating to the assets, income and expenditure of my spouse are based on information believed to be true on the basis of record. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT

ENCLOSURE II

d **Details for Affidavit for Agrarian Deponents (Krishi)**

- e* 1. Total extent of the rural land(s) owned, or the specific shareholding in the same land:
2. Jamabandis/Mutations to show ownership.
3. Location of the land owned by the party.
- f* 4. Nature of land : whether wet land or dry land.
5. Whether such land is agricultural land or non-agricultural land:
6. Nature of agriculture/horticulture:
7. Nature of crops cultivated during the year:
8. If rural land is not cultivable, whether the same is being used for business, leasing or other activity:
- g* 9. Income generated during the past 3 years from the land.
10. Whether any land is taken on lease/bartai (or any other term used for a lease in the local area of the jurisdiction concerned where rural/agricultural land is located.)
11. (a) Whether owner of any livestock, such as buffaloes, cows, goats, cattle, poultry, fishery, bee keeping, piggery, etc. the number thereof and income generated therefrom?
- (b) Whether engaged in dairy farming, poultry, fish farming or any other livestock activity.
12. Loans, if any obtained against the land. Furnish details of such loans.
13. Any other sources of income:
- h* 14. Liabilities, if any.
15. Any other relevant information:

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit. a
2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.
3. I understand that any false statement in this affidavit, apart from being contempt of court, may constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment up to seven years and fine, and Section 209 of the Indian Penal Code punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199 and 209 of the Indian Penal Code, 1860. b

DEPONENT

Verification

Verified at ___ on this ___ day of ___ that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals. c

DEPONENT

ENCLOSURE III

Affidavit for the State of Meghalaya

1. Whether the woman is the youngest daughter of the family. e
2. Whether the woman is staying with her husband in her family property.
3. Whether she has any maternal uncle, who plays a very important role in their family matters, which includes settlement of matrimonial disputes. The woman should also disclose her clan and her lineage. f
4. The woman should disclose if her children have adopted the surname of her mother, inasmuch as Khasi has been defined as “a person who adopts the surname of his or her mother”.
5. The woman should disclose if she gets any financial assistance from her clan or family member. g
6. The woman should disclose if her parents are alive more specifically, her mother, and how many siblings she has.
7. In event of a woman not being the youngest daughter, she has to disclose who the youngest daughter is.
8. The woman should disclose if she has any movable or any immovable property, self-acquired or inherited from her clan. h

9. The woman should disclose if she is married to tribal or non-tribal. The above format may be modified or adapted by the court concerned, as may be considered appropriate.

Declaration

1. I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit.
2. I undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.
3. I understand that any false statement in this affidavit, apart from being contempt of court, may also constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment up to seven years and fine, and Section 209 of the Indian Penal Code punishable with imprisonment up to two years and fine. I have read and understood Sections 191, 193, 199, and 209 of the Indian Penal Code, 1860.

DEPONENT

Verification

Verified at _____ on this _____ day of _____, that the contents of the above affidavit are true to my personal knowledge, no part of it is false and nothing material has been concealed therefrom, whereas the contents of the above affidavit relating to the assets, income and expenditure of my spouse are based on information believed to be true on the basis of record. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT
