

THE HIGH COURT OF ORISSA, CUTTACK

No. XI-13/2020, 10459(36), Dated. 12/11/2020

From:

Shri Mahesh Ranjan Dash,
Registrar General

To:

The District & Sessions Judge, JJD

Sub: Hon'ble Supreme Court Judgment Dated 04.11.2020 passed in Criminal Appeal No.739 of 2020 (arising out of SLP (Crl.) No.3993 of 2018) titled 'Rajneesh Verma Vs. Neha & Anr.' regarding the matter of maintenance under Section 125 Cr.P.C.

Sir,

I am directed to forward herewith a copy of Supreme Court Judgment Dated 04.11.2020 passed in Criminal Appeal No.739 of 2020 (arising out of SLP (Crl.) No.3993 of 2018) titled 'Rajneesh Verma Vs. Neha & Anr.' on the subject cited above for your information and necessary action as per the direction of the Hon'ble Apex Court and communication to all the Judicial Officers working within your jurisdiction for their strict adherence. Further, I am to request you to upload the same in your respective website for awareness and implementation.

Yours faithfully,


REGISTRAR GENERAL

Memo No. 10459(36) / Date. 12/11/2020

Copy forwarded to the Judge, Family Court, _____, with the
information and strict adherence of the direction of Hon'ble the Supreme Court of India.


REGISTRAR GENERAL

Sanjeev S. Kalgaonkar
Secretary General
Supreme Court of India



Tel.: 32364001
Fax: 32366176

November 6, 2020

Dear Shri Dash,

In compliance of direction of the Hon'ble Court, I am to forward herewith a copy of the signed order dated 04-11-2020 passed in Criminal Appeal No.730 of 2020 (Arising out of SLP (Cr.) No.9503 of 2018) titled 'Raghav Vs. Neta & Anr.', for your information and necessary action, such as to circulate it to all the District Courts in your State and the same be displayed on the website of all the District Courts/Family Courts/Courts of Judicial Magistrates in your State for awareness and implementation.

Kindly acknowledge the receipt of the communication at the earliest.

With regards,

Yours sincerely,

[*Signature of Sanjeev S. Kalgaonkar*]
[Sanjeev S. Kalgaonkar]

Encl.: As above

Shri Malaya Ranjan Dash
Registrar General,
Orissa High Court,
Cuttack - 753 002,
Odisha.

THE HIGH COURT OF ORISSA, CUTTACK

No. XI-15/2020, (1450/20) / Date 12/11/2020

From

Shri Malaya Ranjan Dash,
Registrar General

To

The District & Sessions Judge, (All)

RECEIVED ON

12 NOV 2020

REGISTRAR

Re: Hon'ble Supreme Court Judgment Dated. 06.11.2020 passed in Criminal Appeal No.730 of 2020 (arising out of SLP (Crl.) No.6500 of 2018) titled "Rajeshwari Vs Neha & Anr." regarding the matter of maintenance under Section 125 Cr.P.C.

Re:

I am directed to forward herewith a copy of Supreme Court judgment Dated 06.11.2020 passed in Criminal Appeal No.730 of 2020 arising out of SLP (Crl.) No.6500 of 2018 titled "Rajeshwari Vs Neha & Anr." on the subject cited above for your information and necessary action as per the direction of the Hon'ble Apex Court and communication to all the Judicial Officers working within your jurisdiction for their strict adherence. Further, I am to request you to upload the same in your respective website for awareness and implementation.

Yours faithfully,


REGISTRAR GENERAL

Memo No. 1000(6) Date 12/11/2020

Copy forwarded to the Judge, Family Court, (All) for information and strict adherence of the decision of Hon'ble the Supreme Court of India.


REGISTRAR GENERAL

Sanjeev S. Kalgaonkar
Secretary General
Supreme Court of India



Tel: 23384561
Fax: 23386170

November 6, 2020

Dear Shri Dash,

In compliance of direction of this Hon'ble Court, I am to forward herewith a copy of the signed order dated 04-11-2020 passed in Criminal Appeal No.730 of 2009 (Arising out of SLP (Cr.) No.4503 of 2018) titled 'Rajneesh Vs. Neha & Ans', for your information and necessary action, such as to circulate it to all the District Courts in your State and the same be displayed on the website of all the District Courts/Family Courts/Courts of Judicial Magistrates in your State for awareness and implementation.

Kindly acknowledge the receipt of the communication at the earliest.

With regards,

Yours sincerely,

[Sanjeev S. Kalgaonkar]

Encl: As above

Shri Malaya Ranjan Dash
Registrar General,
Odisha High Court,
Cuttack - 753 002,
Odisha.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 730 OF 2020
(Arising out of SLP (CrL) No. 2563 of 2018)

RAJNESH

...APPELLANT

Versus

NEHA & ANR.

...RESPONDENTS

INDEX

PART A	Order passed in Criminal Appeal No.730 of 2020
PART B	General Guidelines and Directions
I.	Issue of Overlapping Jurisdictions
II.	Payment of interim maintenance
III.	Criteria for determining quantum of maintenance
IV.	Date from which Maintenance to be awarded
V.	Enforcement of orders of maintenance
VI.	Final Directions

PART A

Leave granted.

- (i) The present Criminal Appeal arises out of an application for Interim Maintenance filed in a petition u/s. 125 Cr.P.C. by the Respondent-wife and minor son. The Respondent No.1-wife left the matrimonial home in January 2013, shortly after the birth of the son-Respondent No.2. On 02.09.2013, the wife filed an application for interim maintenance u/s. 125 Cr.P.C. on behalf of herself and the minor son. The Family Court vide a detailed Order dated 24.08.2015 awarded interim maintenance of Rs. 15,000 per month to the Respondent No.1-wife from 01.09.2013; and Rs. 5,000 per month as interim maintenance for the Respondent No.2-son from 01.09.2013 to 31.08.2015; and (iii) Rs. 10,000 per month from 01.09.2015 onwards. No further orders were passed in the main petition.
- (ii) The Appellant-husband challenged the Order of the Family Court vide Criminal Writ Petition No.875/2015 filed before the Bombay High Court, Nagpur Bench. The High Court dismissed the Writ Petition vide Order dated 14.08.2018, and affirmed the judgment passed by the Family Court.
- (iii) The present appeal has been filed to impugn the Order dated 14.08.2018. This Court issued notice 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 11.09.2019, the Appellant-husband was directed to make payment of the amount of Rs.2,00,000 towards interim maintenance to the wife; and a further amount of Rs.5,00,000, which was due and payable to the wife towards arrears of maintenance, as per his own admission. By a subsequent Order dated 14.10.2019, it was recorded that only a part of the amount 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 proceed under the Contempt of Courts Act 1971 in accordance with the Orders passed by this Court.

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 Mr. Anilku Shetty and Mr. Gopal Sanakarayyan, Senior Advocates as Amici Curiae, who have graciously accepted to assist this Court.

- (iv) By a further Order dated 17.12.2019, the Appellant was directed to pay an amount of Rs. 1,45,000 to the Respondent no.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.

- (v) By a subsequent Order dated 05.08.2020, it was recorded that an Affidavit of Compliance had been filed on 04.08.2020 by the Appellant-husband, wherein it was stated that arrears of Rs. 1,45,000 till 11.09.2019 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.

(vi) By the Order dated 23.08.2020, it was noted that the Appellant had filed an Affidavit dated 23.08.2020 wherein he had admitted and acknowledged that an amount of Rs. 5,00,000 was pending towards arrears of maintenance to the Respondent No.1-wife. The Appellant was directed to pay 50% of the arrears within a period of 4 weeks to the Respondent No.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. Shrikant Purohit, Advocate, a well-known Mediator in Nagpur, to resolve all disputes pending between the parties, and arrive at an overall settlement;

(vii) On 08.10.2020, 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 the Respondent No.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 wife, and would continue to do so without demur. Both parties addressed arguments and filed their written submissions.

(viii) We have heard the Counsel for the parties, and perused the written submissions filed on their behalf.

The husband has inter alia submitted that he was presently unemployed, and was not in a position to pay maintenance to the Respondent No.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 2011. He further submitted that he was exploring new business projects, which would enable him to be in a better position to support his family.

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 over-burdened by the growing expenses, with no support from the husband.

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 purpose. It has also been alleged that the Appellant had retained illegal possession of her Steerthan, which he was refusing to return. Despite orders being passed by this Court, and in the proceedings under the D.V. Act, he was definitely 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.

(iii) 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.

(iv) In the facts and circumstances of the case, we order and direct that:-

- (i) The Judgement and order dated 24.08.2015 passed by the Family Court, Nagpur, affirmed by the Bhopal High Court, Nagpur Bench vide Order dated 14.09.2018 for payment of interim maintenance @ Rs.15,000 p.m. to the Respondent No.1 wife, and Rs.10,000 p.m. to the Respondent No.2 son, is hereby affirmed by this Court.
- (ii) The husband is directed to pay the arrears amounts of maintenance @ Rs.15,000 p.m., within a period of 12 weeks from the date of this Judgment, and continue to comply with that Order during the pendency of the proceedings u/s. 125 Cr.P.C. before the Family Court.

- (c) If the Appellant/bailor fails to comply with the aforesaid directions of this Court, it would be open to the respondent to have the Order enforced u/s. 128 Cr.P.C. and take recourse in all other remedies which are available in accordance with law;
- (d) The proceedings for payment of interim maintenance u/s. 125 Cr.P.C. 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 u/s. 125 Cr.P.C. in Petition No. E-443/2013. Finally, in light of the directions/guidelines issued in the present judgment, within a period of 6 months¹ from the date of this judgment.

The Registry is directed to forward a complete copy of the pleadings, alongwith 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

Given the backdrop of the facts of the present case, which reveal that the application for interim maintenance under Section 125 Cr P.C. 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 compelled 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

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:

"Nothing in the 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.

Judge Krishna Iyer in his judgment in *Captain Biju Chander Kanthal v. Mrs. Veena Kanthal & Ors.*¹ held that the object of maintenance laws is :

"... This provision is a measure of social justice and specially directed to prevent women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of protective nature for protection of women are not penal law for violent men, with social functions to fulfil. The overriding purpose of the constitutional obligation for the weaker sections like women and children must inform interpretation of this or some social legislation. We cannot do

¹ 1970 A.D. 70

possible to be selective in picking out that interpretation and of the circumstances which informs the crime — the cause of the deviation.”

The legislations which have been framed on the issue of maintenance are the Special Marriage Act 1954 (“SMA”), Section 125 of the Cr.P.C. 1973, and the Protection of Women from Domestic Violence Act, 2005 (“P.W.D.V.A”) 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.

I Issue of Overlapping Jurisdiction

Maintenance may be claimed under one or more of the aforesaid 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 (“HAM.A”), and also in a substantive proceeding for either dissolution of marriage, or restoration of conjugal rights, etc. under the Hindu Marriage Act, 1955 (“HMA”) by invoking Sections 24 and 25 of the said Act.

- (ii) In *Nanab Chaud v. Chandra Kishore Agarwal & Ors.*², the Supreme Court held that there was no inconsistency between the Cr.P.C. and HAMA. Section 4(b) of HAMA would not repeal or affect the provisions of Section 488 of the old Cr.P.C. It was held that:

“*d. Both can stand together. The Maintenance Act is an act to amend and clarify the law relating to adoption and maintenance among Hindus. The law was substantially similar before and substantially no suggested that Hindu Law, as it stood immediately before the commencement of this Act, singular in its dealt with the maintenance of children, was in any inconsistency with Section 488, Cr.P.C. The name of the section is different. Section 488 involves a summary offence and is applicable in all cases, 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 *Kamal Singh v. Dule* AIR 1960 All 555, before the Calcutta High Court of Maharashtra Agarwala - *Case No. 1796/3/ C. I. L. 520* and before the Poona High Court in *Nana Raut v. Kisan Raut* AIR 1960 Poona 12. The three High Courts have, in our view, correctly come to the conclusion that Section 488 of the Maintenance Act does not repeal or affect in any manner the provisions contained in Section 488, Cr.P.C.*

(emphasis supplied)

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 jurisdictions. This general inquiry needs to be circumcribed, so that the respondent / husband is not obliged to comply with successive orders of maintenance passed under different enactments.

For instance, if in a previous proceeding under Section 125 Cr.P.C., 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 *jusmodo lice* 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.

Statutory provisions under various enactments

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

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.

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 in 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:

S.M. *pendente lite* — Where in any proceeding under Chapter V or Chapter VI it appears to the court that the wife has no independent means sufficient for her support and the necessary expenses

of the proceeding, or 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.

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 thirty days from the date of service of notice on the husband."

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

"S. 37. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under Chapter V or Chapter VI and, at the time of passing any decree or, at any time subsequent to the decree, an application made to it by the parties, 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 time 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.

(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 sub-section (1), money, or the substance of either party, vary, modify or rescind any such order in such manner as it may seem fit the court to be just.

(3) If the district court is satisfied that the wife or whose favour an order has been made under this Section has committed an act leading to a chaste life, or vice, at the instance of the husband, vary, modify or rescind any such order and in such manner as the court may deem just.

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

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 suit.

Section 24 of the HMA provides for *maintenance pendente litis*, 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:

"24. Maintenance pendente litis 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 independent income sufficient for her or his support and the expenses of the proceeding, it may, on the application of the wife or the husband, under the regulation to pay to the petitioner the expenses of the proceeding and monthly during the proceeding 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.

English Supply

The proviso to Section 24 providing a time limit of 60 days for disposal of the application was inserted vide Act 49 of 2001 w.e.f 24.09.2001.

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, make application made to it for the purpose by either the wife or the husband, as the case may be, under that the respondent shall pay to the petitioner for her or his maintenance and support an amount not exceeding the monthly or periodical sum for a term not exceeding the life of the applicant or, 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, if necessary to the court to be just, and any such amount may be awarded, if necessary, as 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 determine.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has committed or, if such party is the wife, that she

husband 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 restrain such order in such manner as the court may direct."

(emphasis supplied)

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 ("HAM Act")

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 :

"18. Maintenance of wife.—

- (1) Subject to the provisions of this section a Hindu wife, whether married before or after the commencement of the 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—
 - (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 negligently 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) if he has;
 - (d) if he has any other wife living.

- (i) if the Hindu wife is continuing in the same house or which her wife is living or
otherwise resides with a non-Hindu elsewhere;
- (ii) if the Hindu wife has converted to be a Hindu by conversion to another religion;
- (iii) if there is any other cause preventing living separately;
- (iv) a Hindu wife shall not be entitled to separate residence and
maintenance from her husband if she is separated to convert to be a Hindu
by conversion to another religion."

The distinction between maintenance under HMA and HAMA is that the right under Section 18 of 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 HMA.⁷

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 HAMA, only a wife may seek maintenance.

The interplay between the claim for maintenance under HMA and HAMA comes up for consideration by the Supreme Court in *Chamal Dhanika v. Jawaharil Dhanika*.⁸ The Supreme Court, while considering the various laws relating to marriage amongst Hindus, discussed the scope of application under the HMA and HAMA in the following words:

"...Section 18(2) of the Hindu Marriage and Maintenance Act, 1950,⁹ 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 separately, without forfeiting her claim to maintenance, if he is guilty of any of the misbehaviour mentioned therein or in account of his being in one of objectionable conditions as mentioned therein. So while retaining 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 pending trial is denied on the subsistence 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 agreement that either her natural state has been attained or effected by passing a decree for restoration of conjugal rights or mutual separation or partition or separation in the marriage simply dissolved by a decree of nullity or dissolution, with or without her

process. That when her marital status is to be affected or dissolved the court may do by passing a decree for or against her. Or it at the time of the beginning of that event, the court being seized of the matter, makes an auxiliary or incidental power to grant permanent alimony. Not only that the court retains the jurisdiction at subsequent stages to fulfil this incidental or auxiliary 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 purview of a dissolved or broken marriage. But under no kind of process the legislature enacts conferring the Hindu Marriage Act removed the right of permanent maintenance in favour of the husband in the case, as the case may be, dependent on the court passing a decree of the kind as arranged under Sections 9 to 14 of the Act. In other words unless the marital status being affected or dissolved till the matrimonial cases under the Hindu Marriage Act the claim of permanent alimony has not to be valid as auxiliary or incidental to such dissolution or separation. The wife's claim for maintenance ascertainable has then to be regulated under the Hindu Adoptions and Maintenance Act, 1954 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955. ~~though part of the same civil legal scheme regulating the law applicable in Hindu~~

(emphasis supplied)

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; (iii) from the estate of her husband, or her father or mother, or (iv) from her son or daughter, if any, or his or her cause.

Section 20 of HAMA provides for maintenance of children and aged parents. Section 20 casts a statutory obligation on a Hindu male to maintain his unmarried daughter, who is unable to maintain herself out of her own earnings, or other property. In *Abhilash V. Parkash & Ors.*⁵ a three-judge bench of this Court held that Section 20(1) is a recognition of the principles of Hindu law, particularly the obligation of the father to maintain an unmarried 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 u/s 123 Cr.P.C., 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 infirmity or injury, unable to maintain himself, 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 Cr.P.C. is to provide immediate relief to the wife and children in a summary proceeding, whereas under Section 20 read with Section 3(b) of HAMA, a much larger right is contemplated, which requires determination by a civil court.

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:

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 considerations 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 ex-wife or former partner under this Act, regard shall be had to—

- (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 occupation or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

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

- (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 dependent;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependent;
- (e) the contributions between the dependent and the deceased;
- (f) the value of the property of the dependent and any income derived from such property, or from his or her earnings or from any other source;

(ii) the mother of dependents entitled to maintenance under the Act;

(d) Section 125 of the Cr.P.C.

Chapter IX of Code of Criminal Procedure, 1973 provides for maintenance of wife, children and parents in a summary proceeding. Maintenance under Section 125 of the Cr.P.C. may be claimed by a person irrespective of the religious community to which they belong. The purpose and object of Section 125 Cr.P.C. is to provide immediate relief to an applicant. An application under Section 125 Cr.P.C. 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.

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.

In *Bhagwan Dutt v. Kanta Devi*¹⁰ the Supreme Court held that under Section 125(1) Cr.P.C. only a wife who is "unable to maintain herself" is entitled to seek maintenance. The Court held

"The object of these provisions being to prevent vagrancy and idleness, the Magistrate has to find out in what is required by the wife as minimum standard of living which is neither burdensome nor excessive, but is modestly consonant with the status of the family. The needs and requirements of the wife for such minimum living can be fairly determined with her respective income, also, is taken into account together with the earnings of the husband and his commitments."

(emphasis supplied)

Prior to the amendment of Section 125 in 2005, 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

¹⁰ (1993) 1 SCC 344

discretion 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 has vested with the power to order the respondent to make a monthly allowance towards interim maintenance during the pendency of the petition.

Under subsection (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.

The amended Section 125 reads as under :

"125. Order for maintenance of wives, children and parents.

(1) Any person having sufficient cause neglects or refuses to maintain his wife, wife, unable to maintain herself;

(ii) His legitimate or illegitimate minor child, whether married or not, unable to maintain herself; or

(iii) for 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 herself; or

(iv) for father or mother, unable to maintain himself or herself;

a Magistrate of the first class may, upon proof of such neglect or refusal under such person as make a monthly allowance for the maintenance of his wife or such child, father or mother, in such monthly sum as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may direct in due course.

Provided that the Magistrate may order the father of a minor female child referred to in clause (ii) to make such allowance until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means;

Provided further that the Magistrate may, during the pendency of the proceeding, requiring monthly allowances for the maintenance under this section, order such person to make a monthly allow for the monthly maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable and in part the same, to such person as the Magistrate may from time to time direct;

Provided also that no application for the monthly allowances for the maintenance and expenses of proceeding under this section shall, as far as possible, be disposed of earlier and later from the date of the service of notice of the application to such person.

Explanation.—For the purposes of this Chapter—

(a) "man" means a person who, under the provisions of the Indian Majority Act, 1873 (9 of 1873), is deemed not to have attained his majority;
(b) "wife" includes a woman who has been divorced by, or has absented herself from, her husband and has not remarried.

(c) 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, in the same way as—

(d) If any person in widow's bid 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 fees, and may sentence such person, at 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 expiration of the warrant, to imprisonment for a term which may extend to one month or until payment of such sum;

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Courtier by 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 her wife on remuneration 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 concubine, it shall be considered to be a just ground for his wife's refusal to live with him.

(e) 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 until his return 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;

(f) On proof that any wife or widow, former or 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)

In *Chamkila v. Dinkar*,⁷ 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 of the Cr.P.C. 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.

Proceedings under Section 125 of the Cr.P.C. are summary in nature. In *Bhurmi Moti Singh v. Meera & Ors.*⁸ this Court held that Section 125 of the Cr.P.C. was conceived to alleviate 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 inescapable 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.

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 u/s. 125 Cr.P.C. came up for consideration in *Chandramukhi v. Pyarela Kumar Singh Kurnambari & Ors.*,⁹ 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 recognition 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 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 pre-condition for grant of

⁷ (1999) 2 SCC 316.

⁸ (2007) 6 SCC 391.

⁹ (2011) 1 SCC 141.

The judgment has turned to a page break.

sustenance u/S. 125 Cr.P.C. The Court relied on the Malimati 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.

The law presumes in favour of marriage, and against concubage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings u/E. 125 Cr.P.C. such strict standard of proof is not necessary.¹¹

(ii) Protection of Women from Domestic Violence Act, 2005 ("D.V. Act")

The D.V. Act stands on a separate footing from the law discussed hereinabove. The D.V. 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.

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 *Binal I. Haronu & Ors. v. Kisan Narottamdas Haronu & Ors.*¹² the Court held that the "respondent" could also be a female in a domestic relationship with the aggrieved person. Section 3 of the D.V. 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 circumstances, be by one woman on another. Section 17(2) provides that the aggrieved person cannot be

¹¹ *Kamathilal Dev. v. H.R. Malimati Committee* (2003) 11 SCC 405.

¹² (2010) 10 SCC 101.

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, 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 provision to Section 2(q), as being contrary to the object of the Act.

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. Kothawala v. D. Patilwani*.¹⁴ 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 benefits of D.V. Act. Merely spending week-ends together, or a one-night stand, would not make it a "domestic relationship".

For a live-in relationship to fall within the expression "relationship in the nature of marriage", the Court in *Sudir Kumar v. P.K.V. Suresh*¹⁵ 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 relationships; (f) children; (g) recognition in public and (h) intention and conduct of the parties. The Court held that these guidelines were only indicative, and not exhaustive.

"Domestic violence" has been defined in Section 3 of the Act, which includes economic abuse as defined in Explanation (v) to Section 3, as :

¹⁴ 2004(10) SCC 740.

¹⁵ 2003(17) SCC 733.

the interpretation given in S.R. Shahu 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(a) is an exhaustive definition. The "shared household" is the household which is the dwelling place of the aggrieved person at present time. If the definition of "shared household" in Section 2(a) is read to mean all the houses where the aggrieved person has lived in a domestic relationship alongwith 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 "or 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 u/s 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. Merely 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(a) i.e., Sections 17 and 19 grant no entitlement in favour of an aggrieved woman in 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 tenancy in 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.

The right to residence s.s. 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 u/s 12 of the D.V. Act, or in any civil proceeding, the court has to balance the rights between the aggrieved woman and the parents-in-law.

Section 20 provides for monetary relief to the aggrieved woman:

-20. Monetary relief.-

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate shall 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 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, 1971 (3 of 1971) 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 in which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payment of maintenance in the entire and accomplishment of the case may require."

(emphasis supplied)

Section 20(1)(d) provides that maintenance granted under the D.V. Act to an aggrieved woman and children, would be given effect to, in addition to an order of maintenance awarded under Section 125 of the Cr.P.C., or any other law in force.

Under sub-section (3) 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 unpaid to the credit

of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

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 *in 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.

Section 26 of the D.V. 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 alongwith 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 proceeding under this Act, the aggrieved woman would be bound to inform the Magistrate of the grant of such relief.

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

Conflicting judgments on overlapping jurisdiction

- (i) 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 *Jabot Singh Par v. Manjulata*,¹¹ the Madhya Pradesh High Court held that the remedies available to an aggrieved person under S. 20 of the D.V.A. is independent of S. 125 of the Cr.P.C. In an

¹¹ AIR 2001 MP 130

application filed by the husband for adjustment of the amount 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 u/s. 125 Cr.P.C. must be off-set from the amount awarded under S.24 of the HMA, or vice versa.

A similar view was taken by another single judge of the Madhya Pradesh High Court in *Abdul Dwaroky Charkhan v. Molana*.¹⁷

Similarly, the Calcutta High Court in *Sugir Athikari v. Tilak Athikari*¹⁸ 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 u/s. 125 Cr.P.C.

A similar view has been taken in *Chandru Mahan Das v. Tapati Das*¹⁹, wherein a challenge was made on the point that the Court ought to have adjusted the amount awarded in a proceeding under S.125 Cr.P.C., while determining the maintenance to be awarded under S.24 of the HMA, 1955. It was held that the quantum of maintenance determined under S.24 of HMA was to be paid in addition to the maintenance awarded in a proceeding under S.125 Cr.P.C.

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 *Pitali V. Jayaram A. A.*²⁰ has taken the correct view. The Court was considering the issue whether interim monthly maintenance awarded under Section 23 r/w Section 20 (1)(d) of the D.V. Act could be adjusted against the maintenance awarded under Section 125 Cr.P.C. The Family Court held that the order passed under the D.V. Act and the Cr.P.C. 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 D.V. Act makes it clear

¹⁷ (2016) 2 MPJ 1210

¹⁸ 1991(1)SC 104, 1991(1)SC 105

¹⁹ 2011(1)SCC 134 and Cal 97/14

²⁰ 2014(1)SC 1949 and 1299

that the maintenance granted under this Act, would be in addition to an order of maintenance under Section 125 Cr.P.C., and any other law for the time being in force. Sub-section (3) of Section 16 of the D.V. 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 D.V. 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 D.V. 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 :

"*It is often found in practice is the fact that the judgment is passable and the adjustment can be allowed of the lesser amount against the higher amount. Though the wife can simultaneously claim maintenance under the different enactments, it does not in my view mean that the husband can be made liable to pay the maintenance intended by each of the said enactments.*"

(emphasis supplied)

It was held that while determining the quantum of maintenance awarded u/s 125 Cr.P.C., the Magistrate would take into consideration the amounts maintenance awarded to the aggrieved woman under the D.V. Act.

The issue of overlapping jurisdictions under the HMA and D.V. Act or Cr.P.C. came up for consideration before a division bench of the Delhi High Court in *RD v RD*²² wherein the Court held that maintenance granted to an aggrieved person under the D.V. Act, would be in addition to an order of maintenance u/s. 125 Cr.P.C., or under the HMA. The legislature merely enlarges grant of maintenance to the wife under various statutes. It was not the intention of the legislature that one or other is passed in either of the

maintenance proceedings, the court would defer re-injunction of the grant of maintenance in any other proceeding. In paragraphs 16 and 17 of the judgment, it was observed that :

"A concurrent reading of the aforesaid Sections 20, 28 and 36 of DV Act would clearly establish that the provisions of DV Act dealing with maintenance are supplementary to the provisions of other laws and therefore maintenance can be granted in the aggrieved person by under the DV Act which would also be in addition to any order of maintenance awarded out of Section 125 of Cr.P.C."

"On the contrary, if any order is passed by the Family Court under Section 24 of HMA, the same would not deliver the Court in the proceedings arising out of DV Act or proceeding under Section 125 of Cr.P.C. initiated by the aggrieved person claiming maintenance. However, it cannot be lost sight of a proviso of law that once an order of maintenance has been passed by any Court then the same cannot be re-instituted upon her in any other Court. The legislative mandate on the grant of maintenance in the wife under various statute such as HMA, Hindu Adharm and Maintenance Act, 1978 (hereinafter referred to as WMCA), Section 125 of Cr.P.C. and/or Section 20 of DV Act, in such series ~~cannot~~ have been intended to provide for the continuation in the wife and at no where the mention of the legislature that she ~~are~~ are under is grant in either of the proceedings, the said ~~wife~~ would defer re-injunction of the grant of maintenance in any other Court."

(emphasis supplied)

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

Similarly, in *Tumshree & Ors v. R.S. Moorthy*,⁷² the Delhi High Court was considering a case where the Magistrate's Court had ~~not~~ adjourned the proceedings u/s 125 CrP.C. 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 u/s 12 of the DV Act, the

Court would take into account an order of maintenance passed u/s. 125 Cr.P.C., 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 *inter alia*. There is a distinction in the scope and power exercised by the Magistrate under S.125, Cr.P.C. and the D.V. Act. With respect to the overlap in both statutes, the Court held :

"*The reading of Section 26(3)(d) of the D.V. 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 ~~been~~ ~~not~~ ~~overruled~~ and laid down that at the time of consideration of an application for grant of maintenance under Section 125 of the D.V. Act, the maintenance fixed under Section 125 Cr.P.C. shall be taken into account.*"

(emphasis supplied)

The issue whether maintenance u/s. 125 Cr.P.C. 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 *Rakish Malhotra v Krishna Malhotra*.¹¹ 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 u/s. 25(2) of HMA. The Court held that:

"*Given the Parliament has ~~repealed~~ the Civil Code, Section 25(2) of the Act and kept a remedy intact and made available to the concerned party seeking modification, the logical argument 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 extenuation of the situation and urgency, to the number, of wife initially pressing an application Under Section 125 of the Code to secure maintenance in order to sustain herself. In such manner the wife would naturally be entitled to have a full-fledged adjudication in the form of any challenge raised before a Competent Court under under the Act Or similar such enactment. But the ~~coercive~~ ~~cannot~~ be the ~~mandatory~~ norm.*"

The Court directed that the application u/s. 125 Cr.P.C. be treated as an application u/s. 25(2) of HMA and be disposed of accordingly.

¹¹ 2021 SCC Online No. 116

- (iii) In *Nagundragya Narhar v. Venkamma*¹⁴ this Court considered a case where the wife instituted a suit under Section 12 of HAMA, after signing a consent letter in proceedings u/s. 125 Cr.P.C., stating that she would not make any further claims for maintenance against the husband. It was held that the proceedings u/s. 125 Cr.P.C. were summary in nature, and were intended to provide a speedy remedy to the wife. Any order passed u/s. 125 Cr.P.C. by a competent court otherwise would not baruse the remedy u/s. 18 of HAMA.
- (iv) In *Sukanya Chaudhary v. Balbir Chaudhary*¹⁵ the Supreme Court directed adjustment in a case where the wife had filed an application under Section 125 of the Cr.P.C. and under HMA. In the S. 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 Cr.P.C. must be adjusted against the amount awarded in the matrimonial proceedings under HMA, and was not to be given over and above the same.

Directions on overlapping jurisdictions

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 D.V. Act and Section 125 of the Cr.P.C., or under H.M.A. It would, however, be impossible to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous proceeding. 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. While deciding the quantum of maintenance in the matrimonial 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.

¹⁴ 2006 (3) SCC 412.

¹⁵ 1997 (11) SCC 296.

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 discharge 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 maintenance. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.

II

Payment of Interim Maintenance

(i)

The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24.09.2001), and the third proviso to Section 125 Cr.P.C. (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provides that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days¹ from the date of service of notice on the contending 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 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.

(ii)

At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a *priori* fair assessment of the amount to be awarded. It is often seen that both parties submit scantly 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.

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 maintain herself and the minor children, till she begins receiving interim maintenance.

(iii)

In the first instance, the Family Court in compliance with the mandate 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 Section 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.

- (iv) 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, alongwith an Affidavit of Disclosure of Assets and Liabilities before the concerned court, as a mandatory requirement.
- (v) On the basis of the pleadings filed by both parties and the Affidavit 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.
- (vi) The Delhi High Court, in a series of judgments beginning with *Puneri Kaur v. Indeffit Singh Sandhu*²⁰ and followed in *Kusum Sharma v. Mahinder Kumar Sharma*²¹ ("Kusum Sharma I") directed that applications for maintenance under the HMA, HAMA, D.V. Act and the Cr.P.C. be accompanied with an Affidavit of assets, income and expenditure as prescribed. In *Kusum Sharma II*,²² 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 Indian Divorce Act, 1869. In *Kusum Sharma III*,²³ the Delhi High Court modified the format of the Affidavit, and extended it to maintenance proceedings under the Guardians & Wards Act, 1890 and the Hindu Minority & Guardianship Act, 1956. In *Kusum Sharma IV*,²⁴ the Court took notice that the filing of Affidavits alongwith pleadings gave an unfair advantage to the party who files

²⁰ 1992 (2) DLT 1073

²¹ 1994 (1) DLT 661

²² 1995 (2) DLT 700

²³ 1997 (1) DLT 207

²⁴ 2007 (1) DLT 763 (H.L.T.)

the affidavit subsequently. In this judgment, it was clarified that the Affidavit must be filed simultaneously by both parties. In *Karmen Sharma P*¹⁴ the Court consolidated the format of the Affidavits in the previous judgments, and directed that the same be filed in maintenance proceedings.

- (vii) 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 17.12.2019 requested the National Legal Services Authority ("NALSA") to submit a report of the suggestions received from the SLSAs for framing guidelines on the Affidavit of Disclosure of the Assets and Liabilities to be filed by the parties.

- (viii) The NALSA submitted a comprehensive report dated 17.02.2020 containing suggestions from all the State Legal Service Authorities throughout the country. We find the various suggestions made by the SLSAs to be of great assistance in finalizing the Affidavit of Disclosure which can be used by the Family Courts for determining the quantum of maintenance to be paid.

- (ix) 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.

We feel that the Affidavit to be filed by parties residing in urban areas, would require to be vastly 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 **Enclosure I and II** to this judgment.

- (x) We have been informed by the Meghalaya State Legal Services Authority that the State of Meghalaya has a predominantly tribal population, which follows a matriarchal system of society. The population is composed of three tribes viz. the Khasi, Jaintia and Garo tribes. In Meghalaya, the youngest daughter is the

¹⁴ Decided by the Delhi High Court (Civil Judgments dated 06.01.2020).

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 unorganized sector, such as agriculture. Under Section 7(3)(d) of the Income Tax Act, 1961, the tribals residing in this State are exempt 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.

(ii) 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 to exercise of our powers under Article 136 read with Article 142 of the Constitution of India.

(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 concerned Family Court / District Court / Magistrate's Court, 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 alongwith 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 obstinacious in delaying the proceedings.¹³

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;

¹³ *Coronation Motor Sales, Gurgaon v. State of Haryana* (2011) 139 DLT 145 (Delhi High Court 24.07.2011).

- (d) The above format may be modified by the concerned Court, if the exigencies of a case require the same. It would be left to the judicial discretion of the concerned Court, to issue necessary directions in this regard.
- (e) If apart from the information contained in the Affidavit of Disclosure, any further information is required, the concerned Court 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 XI of the CPC.

On filing of the Affidavit, the Court may invoke the provisions of Order X of the 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.

- (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.
- (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 u/s 340 Cr.P.C., and for contempt of Court.
- (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 concerned Family Court / District Court / Magistrate's Court must make an endeavour to decide the LA, for Tuner 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.

- (g) A professional Marriage Counselor must be made available in every Family Court.

Permanent alimony

- (i) Parties may lead oral and documentary evidence with respect to income, expenditure, standard of living, etc. before the concerned Court, for fixing the permanent alimony payable to the spouse.
- (ii) 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.
- (iii) 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.
- (iv) If there are any trust funds / investments created by my 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

(i)

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 strict legal formula for fixing the quantum of maintenance to be awarded.

The factors which would weigh with the Court inter alia are the status of the parties; reasonable needs of the wife and dependant 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 other members of the family; reasonable standard of living for a non-working wife.²²

In *Mamta Singh v. Akash Singh*²³ the 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.

On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, habitation if any, would

²² Refer to *Rajeev Kishan Singh & Others v. Deependra Singh*, (2007) 1 SCC 2.

²³ Refer to *Prem Pal Singh & Others v. Parveen Devi Singh*, (2007) 11 SCC 112.

²⁴ GOMO (1997) 1 SCC 121.

- 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 prevailing inflation rates and high costs of living. The plea of the husband that he does not possess any source of income/groceries does not absolve him of his moral duty to maintain his wife, if he is able bodied and has educational qualification.¹⁷
- (ii) 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.¹⁸
- 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 meager that it drives the wife to poverty. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.
- (iii) Section 23 of HAMA provides statutory guidance with respect to the criteria for determining the quantum of maintenance. Sub-section (2) of Section 23 of 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.
- (iv) 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 consonant with the standard of living to which the aggrieved woman was accustomed to in her matrimonial home.

¹⁷ *Leena Lathe v. Jitender Singh*, 2016 (2) Rang 101.

¹⁸ *Chandrika v. Ram Singh* 2008 (2) SCR 111.

(v) The Delhi High Court in *Ahursat Hodge v. Soni, Saroj Hegde*⁷⁷ laid down the following factors to be considered for determining maintenance:

1. Name of the parties.
2. Reasonable means of the claimants.
3. The independent income and property of the claimants.
4. The number of persons the non-applicant has to maintain.
5. The claimant should not be in a similar lifestyle as he/she enjoyed in the pre-marital times.
6. Non-applicant's liabilities, if any.
7. Provision for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some gain work is materialized not while estimating the income of the non-applicant where all the gains or career amounts are not disclosed.
10. The non-applicant is defrauding the cost of litigation.
11. The amount awarded w/ 12% C.R.P.C. is adjustable against the amount awarded w/ 26 of the Act 17.

(vi) 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

In a marriage of long duration, when parties have coexisted 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 other 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 re-train 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 entry into the work-force after a break of several years.

(b) Right to residence

Section 17 of the D.V. 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 used jointly or singly by both, or singly by either of the spouses; or a joint family house, of which the respondent is a member.

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. The Court in *Sanchi Chander Chopra v Sudha Chopra*¹² (supra) 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 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 D.V. 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.

Section 19 (1)(b) of the D.V. 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

¹²Civil Appeal No. 21617/2009 dated 20th August 2010 (11.10.2010).

dependent 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

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.

In *Shashikala d/o Atul v. Kishobhai Patel*,⁴⁰ 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.⁴¹ Maintenance does not mean, and cannot be allowed to mean mere survival.⁴²

In *Kanita Kaushal d/o. v. Ashu Kaushal*,⁴³ the wife had a post-graduate degree, and was employed as a teacher in Jalandhar. 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.

The Bombay High Court in *Suresh Dattatraye Ande v. Kalpana Suresh Ande*,⁴⁴ while relying upon the judgement in *Kanita Kaushal* (supra), held that neither the mere potential to earn, nor the actual earning of the wife, however meager, is sufficient to deny the claim of maintenance.

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 Prakash Sehrawat v. Shri Rani Chander*.

⁴⁰ (2008) 12 SCC 109.

See also *Dhananjay v. Mr. Kamlesh Dinesh Chandra & P. Srinivas & S. Devegowda Ors.*, 2018(1) 13 CWS.

⁴¹ *Chandrika v. Sanjay Kumar*, (2009) 12 SCC 116.

⁴² *Hiral Patel v. Deep Patel*, (2013) 10 SCC 119.

⁴³ (2009) 10 SCC 119.

⁴⁴ 2020 SCC OnLine Delhi 101.

Prakash.⁴⁷ The onus is on the husband to establish with convincing 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.

This Court in *Shambhu Paroogur v. Shabu Khan*⁴⁸ cited the judgment in *Chandit Prakash* (supra) 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

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 expenses to complement the basic education must be factored in, while awarding child support. Also, it should be a reasonable amount to be awarded for extra-curricular / coaching classes, and not an overly extravagant amount which may be claimed.

Education expenses of the children must be initially 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

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.

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 D.V. Act, does not provide the date from which the maintenance is to be awarded.

Section 129(2) Cr.P.C. 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.⁴⁰

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.

(a) 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 law is to protect a deserted wife and dependant 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.

The Orissa High Court in *Suniti Mohanty v. Rabindra Nath Sahu*⁴¹ 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 Court, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to deprive maintenance from the date of the order.

In *Kanchi Charam Jena v. Sri. Nirmala Jena*⁴², the Orissa High Court was considering an application u/s 125 Cr.P.C., whereon it was held that even though

⁴⁰ *R. Bhawar v. R. Bhawar* 6 (1990) 133 A.P.L.J. (H.C.) 608.

⁴¹ 1990 (1) O.R.D. 361.

⁴² 1991 (1) O.R.D. 379.

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 *Kavita Kumar Naresh v. Laxmi Jora*,⁷⁷ wherein it was reiterated that dependents were entitled to receive maintenance from the date of application.

The Madras High Court in *Krishna Jaya v. Dhuram Raj* held⁷⁸ 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 laid 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) CrP.C., 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.

The law governing payment of maintenance u/s. 125 CrP.C. from the date of application, was extended to HAMA by the Allahabad High Court in *Ganga Prasad Srivastava v. Additional District Judge, Gorakhpur*.⁷⁹ 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 maintaining u/s. 18 of HAMA, wherein the Civil Judge directed 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 profligacy 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

⁷⁷ 2001 (1) SCC 726 (M).

⁷⁸ 1991 (2) Mysr 431.

⁷⁹ 1991 (2) All 559.

made to survive till such time. The wife was held to be entitled to maintenance from the date of application / suit.

The Delhi High Court in *Lavlesh Shukla v. Rishma*¹⁷ 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 crisis, 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.

(b) From the date of order

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) Cr.P.C. which provides :

"(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."

(emphasis supplied)

The words "or, if so ordered" in Section 125 has been interpreted to mean that where the court is awarding maintenance from the date of application, special reasons ought to be recorded.¹⁸

In *Ram Devi v. State of U.P.*¹⁹ the Allahabad High Court on an interpretation of S. 125(2) of the Cr.P.C. 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) Cr.P.C. is prima facie clear that maintenance shall be payable from the date of the order.

¹⁷ Cr. Rev. P. 2010/2011 decided by the Delhi High Court under Order dated 28.11.2010.

¹⁸ *Shyam Lal v. State of Uttar Pradesh & Ors.* 17/1987 of ACC 1987.

¹⁹ 1998(2) SCC 10.

The Madras High Court in *Amma Ramu v. Sengumalai Ramu*,¹¹ O.R.¹² directed that maintenance ought to be granted from the date of the order.

(ii) From the date of service of summons

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

The Kerala High Court in *Z. Muhammed v. K.M.E. Nair*,¹³ while considering an application for interim maintenance preferred by the wife in a divorce proceeding 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 *Somir Banerjee v. Sugata Banerjee*,¹⁴ 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.

The Orissa High Court in *Gopal Das v. Prabhunnarayana Das*,¹⁵ was considering an application for interim maintenance filed u/s. 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.

In *Kalyani Das v. Surendra Kumar Das*,¹⁶ 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 u/s. 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

¹¹ C.R. No. 2942/2007 decided by the Madras High Court on 20th December 2009.

¹² A.W. 1907 Rev 129.

¹³ M.L.C.W.M. 633.

¹⁴ 1956(2) C.L.D. 34.

¹⁵ A.D. 2009 Dec 131.

maintenance from the date of application, the High Court held that the Family Court had failed to assign any reason in support of its order, and directed:

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 subsequently the parties are living separately and prima facie it appears that the Petitioner has no independent source of income, therefore, this order should have been passed for payment of interim maintenance from the date of separation of the Co-habitee Party-Accused.

(emphasis supplied)

Discussion and Directions

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 S. 125(2) Cr.P.C., it would be appropriate to grant maintenance from the date of application in all cases, including Section 125 Cr.P.C. In the practical working of the 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 interest of justice and due play that maintenance is awarded from the date of the application.

In *Bishal Kumar Dasi and Ors. v. Krishnan Bhagwan Pathak*¹⁰, the 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 *Bikram Malher Singh v. Meenu*¹¹, 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 entitlement 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.

¹⁰ 2009 3 SCC 621

¹¹ 2013 4 SCC 154

The rationale of granting maintenance from the date of application finds its root in the object of tracting maintenance legislation, or to enable the wife to overcome the financial crunch which occurs on separation from the husband. Financial constraints of a dependent spouse, however, their capacity to be effectively represented before the Court. In order to prevent a dependent 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 concerned Court.

In *Radiabai v. Umair Shahzad Govey*⁴¹, the Supreme Court was considering the interpretation of Section 125 Cr.P.C. The Court held:

"125... purposive interpretation needs to be given to the provisions of Section 125 CrPC. While dealing with the protection of a dependent wife or her minor children or minors under this provision, the Court is dealing with the marginalized section of the society. The purpose is to obtain "social justice" which is the constitutional vision enshrined in the Preamble of the Constitution of India. The Preamble to the Constitution of India clearly enunciates 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 enforce 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."

(emphasis supplied)

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 concerned Court. 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.

Enforcement of orders of maintenance

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 defaces 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 *Sachita Firoz Chhavai v. Prakash Nagri Chhavai*¹⁰ held that—

*"The directions of interim alimony and expenses of litigation under Section 37
of law of marriage and grants 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 want of funds."*

- (i) An application for execution of an Order of Maintenance can be filed under the following provisions:
 - (a) Section 38-A of the Hindu Marriage Act, 1955 i.w. Section 18 of the Family Courts Act, 1984 and Order XXI Rule 94 of the CPC for executing an Order passed under Section 34 of the Hindu Marriage Act before the Family Courts;
 - (b) Section 20(6) of the DV Act (before the Judicial Magistrate); and
 - (c) Section 128 of Cr.P.C. before the Magistrate's Court.
 - (ii) Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with the CPC & Cr.P.C.
 - (iii) Section 125(3) of the Cr.P.C. 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 executed 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 Defense**
- (i) Some Family Courts have passed orders for striking off the defense of the respondent in case of non-payment of maintenance, so as to facilitate speedy disposal of the maintenance petition.

¹⁰ AIR 1996 Bom 166.

In *Kamaljeet v. Malish Jain*⁷², 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.

- (ii) The Punjab & Haryana High Court in *Bani v. Parkash Singh*⁷³ was considering a case where the husband failed to comply with the maintenance 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:

"Court is not that powerless as now to bring the husband in book, if the husband has failed to make the payment of maintenance and litigation expenses so well, his defence be struck out."

- (iii) The Punjab & Haryana High Court in *Mohinder Kaur v. Sardar*,⁷⁴ discussed the issue of striking off the defense in the following words:

"...Section 34 of the Act empowers the matrimonial court to award maintenance, jurisdiction fee and also litigation expenses to a needy and indigent spouse, so that the proceedings can be conducted without any hardship on her 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 defences or order passed by the matrimonial court is available under Section 28A of the Act, but the same would not be a bar in 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 complying the court's interim order is the better relief in the initial stage of hearing initially till its execution under Section 28A of the Act. Where the spouse who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to take that, continuing execution proceedings for realizing the amount. Court cannot be a mere spectator holding Negligent disbursement of the interim orders passed by it through 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 owing 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 or execution in a long and arduous procedure. Needless to say, the remedy under Section 28A of the Act regarding execution of decree or interim order does not stand abated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation

⁷² Criminal Appeal No. 1279 of 2010 / 2010 decided by the Indian Supr. Ct. on 24.07.2010.

⁷³ AIR 1996 P&H 179.

⁷⁴ Unpublished.

expenses, the legal consequences for his non-payment are that the decree of the said spouse is liable to be struck off.

(emphasis supplied)

- (iv) The Delhi High Court in *Sonali Kumar v. Bhawna*⁷⁰ held that the Family Court had inherent power to strike off the defence of the respondent, to ensure that no abuse of process of the court takes place.

The Delhi High Court in *Smt. Sudesh Singhvi v. Shri Munshi Lal Singhvi*⁷¹ framed the following issue for consideration : “Whether the appeal against the decree of divorce filed by the appellant-wife can be allowed straightforward without bearing the respondent-husband in the event of our finding his non-payment of interim maintenance and litigation expenses granted to the wife during the pendency of the appeal.”

The reference was answered as follows :

“3. The reference to the portion of the judgment in Ban’s case elicited from us above would show that the Punjab and Haryana High Court and this Page 224b High Court have taken an erroneous 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 Punjab and Haryana High Court in Ban’s case has been followed by a Single Judge of this Court in *Sonali Kumar v. Bhawna*. We tend to agree with this view as it is in consonance with the first premise 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 much a person is entitled to the relief claimed by him in the matrimonial proceedings. We have no hesitation in holding that if even 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 favor 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 appellant-wife can be allowed, without bearing the respondent.

⁷⁰ 2001 (1) DelHC 262.

⁷¹ AIR 2001 Del 270.

- (v) The Punjab and Haryana High Court in *Gurwinder Singh v. Manu & Ors.*⁶⁹ was considering a case where the trial court struck off the defense 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 u/s. 125(3) or Section 421 of the Cr.P.C., the trial court erred in striking off the defense of the husband. The error of the court did not upset in recovery of interim maintenance, but rather prolonged the litigation between the parties.
- (vi) The issue whether defense can be struck off in proceedings under Section 125 Cr.P.C. came up before the Madhya Pradesh High Court in *Hankeshwar Duttavali v. Radhi Duttavali*.⁷⁰ The Court held that neither Section 125(3) of the Cr.P.C. nor Section 10 of the Family Courts Act either expressly or by necessary implication empower the Magistrate or Family Court to strike off the defense. A statutory remedy for recovery of maintenance was available, and the power to strike off defense does not exist in a proceeding u/s. 125 Cr.P.C. 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*,⁷¹ and held that the Magistrate does not possess the power to strike off the defense for failure to pay interim maintenance.

Discussion and Directions on Enforcement of Orders of Maintenance:

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, 52, 55, 60 read with Order XXI.

⁶⁹ *Gurwinder Singh v. Manu & Ors.* 2009 (1) HHC 359.

⁷⁰ 111(2010) 25(7) 143 MP.

⁷¹ Karnataka High Court allowed the review in *Ramireddy Ganayya Venkata S. v. Mr. 2009 (2) KLT (Karn) 423*.

⁷² 2010(3) 62(7) Madras 379.

⁷³ *Shivaji Shinde Phule v. T. P. V. Naik*, 2016 (1) H.L.J. (Karn) 117.

Striking off the defense 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.

Final Directions

In view of the foregoing discussion as contained in Part B – List 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

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceeding(s), 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:

- (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.

(b) Payment of Interim Maintenance

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 both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrates Court, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

For determining the quantum of maintenance payable to an applicant, the Court shall take into account the criteria enunciated in Part D – III of the judgment.

The informal factors are however not exhaustive, and the concerned Court may exercise its discretion to consider any other factors which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

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 II – IV above.

(e) Enforcement / Execution of orders of maintenance

For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 18A of the Hindu Marriage Act, 1955; Section 21(6) of the D.V. Act; and Section 128 of Cr.P.C., 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 r.w. Order XXI.

Before we part with this judgment, we note our appreciation of the valuable assistance provided by the learned Counsel Ms. Apithi Shetty and Mr. Gopal Sankaranarayanan, Senior Advocates in this case.

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.

(INDU MALHOTRA, J.)

New Delhi,
November 4, 2020

(R. SUBHASH REDDY, J.)

Enclosure I

Statement of Assets and Liabilities for Non-Armenian Dependents

I, _____, do _____ or do _____, aged about _____ years, resident at _____ do hereby solemnly affirm and declare as under:

A. Personal Information

1. Name:
2. Age/Sex:
3. Qualifications (Educational and Professional):
4. Whether the Applicant is staying in the matrimonial home / 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 members.
5. Date of marriage:
6. Date of separation:
7. General monthly expenses of the Applicant (e.g., household expenses, medical bills, transportation, etc.)

B. Details of Legal Proceedings and Maintenance being paid

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 D.V. Act, Cr.P.C., MPA, HAMA, etc? If yes, provide details of the quantum of maintenance awarded in the proceedings.
3. If no, provide particulars thereof, alongwith a copy of the Orders passed.
4. Whether the Order of maintenance passed in earlier proceedings has been complied with (if not, amount of maintenance).
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

1. Details of Dependent family members, if any:
 - a. Relationship with dependent;
 - b. Age and sex of dependent;

2. Details of my independent sources of income of the dependants, including interest income, assets, pension, my liability on any such income and any other relevant details.
3. The approximate expenses incurred on account of the dependant.

D. Medical details of any, of the Dependent and/or dependant family members

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 a serious disability, requiring continuous medical expenditure. If yes, produce disability certificate and approximate medical expenditure incurred on such medical treatment.
3. Whether either party or child/children or any other dependent family member is suffering from life-threatening disease, which would entail expenses and regular medical expenditure? If yes, provide details of the same along with summary of previous details of hospitalization/medical expenses incurred.

E. Details of Children of the parties

1. Number of children from the existing marriage / marital relationship/ previous marriage.
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. Transport expenses for education and a summary of general expenses
 - c. Tuition expenses, if any, of any extra educational, vocational or professional / educational course, specialised training or special skills programme of dependent children.
 - d. Details of any loan, mortgage, charge incurred or amount paid (being paid or payable), if any, on account of any educational expenses of children.
5. Whether any voluntary contribution by either of the parties is being made towards their educational expenses. If yes, provide details of the same. Also provide an estimate of any additional contribution that may be required.
6. Whether any financial support is being provided by a third party for the educational expenses of the children?

IV. Details of Income of the Dependent:

1. Name of employer:
 2. Designation:
 3. Monthly income:
 4. If engaged in Government Sector, furnish latest Salary Certificate or current Pay Slip or proof of deposit in bank account, if being remitted directly by employer.
 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 perquisite, benefits, home rent allowance, travel allowance, dearness allowance or any other service benefit is being provided by the employer during the course of current employment.
 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
 - (iii) At the time when the Application for maintenance is filed
 8. Income from other sources, such as rent, interest, shares, dividends, capital gains, FDIs, Post office deposits, mutual funds, stocks, debentures, agriculture, or business, if any, alongwith TDS in respect of any such income.
 9. Furnish copies of Bank Statement of all accounts for the last 3 years.
- V. Assets (movable and immovable) owned by the Dependent:**
1. Self-acquired property, if any
 2. Properties jointly owned by the parties after marriage
 3. Share in wife's ancestral property
 4. Other joint properties of the parties (scooters/ motorbikes/ PWD/ mutual funds, shares, debentures etc.), their value and status of possession
 5. Status of possession of immovable property and details, if held, if leased
 6. Details of home taken or given by the Dependent
 7. Brief description of jewellery and ornaments of parties acquired during their marriage

8. Details of transfer, sale or transaction or alienation of properties previously owned by the applicant, executed during the subsistence of the marriage. Also provide brief reasons for such kind of transaction, if any.

H. Details of Liabilities of the Dependent

1. Loans, liabilities, mortgage, or charge outstanding against the Dependent, if any.
2. Details of any EMI's being paid.
3. Date and purpose of taking loan or incurring any liability.
4. Actual amount borrowed, if any, and the amount paid upto date of filing the Affidavit.
5. Any other information which would be relevant to describe current liabilities of the Dependent.

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

1. Brief description of nature of business/profession/vocational self-employed/with activity.
2. Whether the business/profession self-employment is carried on as an individual, sole proprietorship concern, partnership concern, L.P., 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/loss of the partnership.
3. Net income from the business/profession/ partnership/non-employment.
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 to which such party is in business in the company.
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 profession/business/vocational activity.
8. Information provided by the Dependent with respect to the income, assets and liabilities of the other spouse.
9. Educational and professional qualifications of the other spouse.

2. Whether spouse is coming? 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 an accommodation provided by employer/business-partner?
 4. Particulars of assets and liabilities of spouse as known to the deponent, alongwith any supporting documents.
- 1C. 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.
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.
 3. Details of household and other expenditure of such applicant/spouse in foreign jurisdiction.
 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.
 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 debts, 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 193 and 195 of the Indian Penal Code punishable with imprisonment upto seven years and fine, and Section 200 of Indian Penal Code punishable with imprisonment upto two years and fine. I have read and understood Sections 191, 193, 199 and 200 of the Indian Penal Code, 1860.

DEPOSITOR

Verification

Verified in _____ on the _____ 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.

DEPOSITOR

Enclosure II
Details for Allotment for Agricultural Dependents (Or/ish)

1. Total extent of the rural land's owned, or the specific share holding in the same land;
2. Jamabandi / Matranga to show ownership;
3. Location of the land owned by the party;
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;
9. Income generated during the past 3 years from the land;
10. Whether any land is taken on lease / rental (or any other term) and for a lease in the local area of the concerned jurisdiction where rural agricultural land is located;
11. (a) Whether owner of any livestock, such as buffaloes, cows, goats, cattle, poultry, fishery, bee keeping, pony 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 source of income;
14. Disabilities, 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, expenditures and liabilities other than as stated in this affidavit.
2. I undertake to inform the 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 Sections 190 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment upto seven years and fine, and Section 209 of Indian Penal Code punishable with imprisonment upto two years and fine. I have read and understood Sections 191, 193, 199, and 209 of the Indian Penal Code, 1860.

DEPONENT

Verification

Verified on _____ on the _____ 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.

DEPONENT

Enclosure III
Affidavit for the State of Meghalaya

1. Whether the woman is the youngest daughter of the family.
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 these family matters, which includes settlement of matrimonial disputes. The woman should also disclose her clan and her lineage.
4. The woman should disclose if her children have adopted the surname of her mother, in as much 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 members.
6. The woman should disclose if the 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 immovable property, self-acquired or inherited from her side.
9. The woman should disclose if she is married to tribal or non-tribal.

The above format may be modified or adapted by the concerned Court, 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 194 and 195 of the Indian Penal Code punishable with imprisonment upto seven years and fine, and Section 209 of Indian Penal Code punishable with imprisonment upto two years and fine. I have read and understood Sections 191, 192, 199, and 209 of the Indian Penal Code, 1860.

DEPOSANT

Verification

Verified at _____ on this _____ day of _____ that the contents of the above affidavit are true to my present knowledge, in part or it is false and nothing material has been concealed therefrom, whereas the portions 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.

DEPOSENT