REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 730 OF 2020

(Arising out of SLP (Crl.) No. 9503 of 2018)

RAJNESH **…APPELLANT**

Versus

NEHA & Anr. **…RESPONDENTS**

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INDU MALHOTRA, J.

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 @ Rs. 10,000 per month from 01.09.2015 onwards till 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 arrears of Rs.2,00,000 towards interim maintenance to the wife; and a further amount of Rs.3,00,000, which was due and payable to the wife towards arrears of maintenance, as per his own admission. By a subsequent Order dated 14.10.2019, it was recorded that only a part of the arrears had been paid. A final opportunity was granted to the Appellant-husband to make payment of the balance amount by 30.11.2019, failing which, the Court would proceed under the Contempt of Courts Act for wilful disobedience 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. Inspite of time frames being prescribed by various statutes for disposal of interim applications, we have noticed, in practice that in a vast majority of cases, the applications are not disposed of within the time frame prescribed. To address various issues which arise for consideration in applications for grant of maintenance / interim maintenance, it is necessary to frame guidelines to ensure that there is uniformity and consistency in deciding the same. To seek assistance on these issues, we have appointed Ms. Anitha Shenoy and Mr. Gopal Sankaranaryanan, 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 25.08.2020, 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. Shridhar 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 son, 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 2013. He further submitted that he was exploring new business projects, which would enable him to be in a better position to sustain his family.

The wife has *inter alia* submitted that the amount of Rs.10,000 awarded for the son was granted when he was 2 ½ years old in 2015. The said amount was now highly inadequate to meet the expenses of a growing child, who is 7 ½ 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 parents. It has also been alleged that the Appellant had retained illegal possession of her *Streedhan*, which he was refusing to return. Despite orders being passed by this Court, and in the proceedings under the D.V. Act, he was deliberately not complying with the same. In these circumstances, it was submitted that there was a major trust deficit, and there was no prospect for reconciliation.

(ix) 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.

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

(a) The Judgment and order dated 24.08.2015 passed by the Family Court, Nagpur, affirmed by the Bombay High Court, Nagpur Bench *vide* Order dated 14.08.2018 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;

(b) The husband is directed to pay the entire arrears of maintenance @ Rs.15,000 p.m., within a period of 12 weeks' from the date of this Judgment, and continue to comply with this Order during the pendency of the proceedings u/S. 125 Cr.P.C. before the Family Court;

(c) If the Appellant-husband fails to comply with the aforesaid directions of this Court, it would be open to the respondents to have the Order enforced u/S.128 Cr.P.C., and take recourse to 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 months' 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 constrained to move successive applications for enforcement from time to time, we deem it appropriate to frame guidelines on the issue of maintenance, which would cover overlapping jurisdiction under different enactments for payment of maintenance, payment of Interim Maintenance, the criteria for determining the quantum of maintenance, the date from which maintenance is to be awarded, and enforcement of orders of maintenance.

Guidelines / Directions on Maintenance

Maintenance laws have been enacted as a measure of social justice to provide recourse to dependant 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 this article shall prevent the State from making any special provision for women and children."*

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

Justice Krishna Iyer in his judgment in *Captain Ramesh Chander Kaushal* v *Mrs. Veena Kaushal & Ors.*[1] held that the object of maintenance laws is :

> *"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is*

[1] (1978) 4 SCC 70.

possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts."

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 ("*D.V. Act*") which provide a statutory remedy to women, irrespective of the religious community to which they belong, apart from the personal laws applicable to various religious communities.

I Issue of Overlapping Jurisdiction

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

(i) In *Nanak Chand* v *Chandra Kishore Aggarwal & 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 :

> "*4. Both can stand together. The Maintenance Act is an act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, insofar as it dealt with the maintenance of children, was in any way inconsistent with Section 488, Cr.P.C. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. Recently the question came before the Allahabad High Court in Ram Singh v. State: AIR1963All355, before the Calcutta High Court in Mahabir Agarwalla v. Gita Roy [1962] 2 Cr. L.J.528 and before the Patna High Court in Nalini Ranjan v. Kiran Rani: AIR1965Pat442. The three High Courts have, in our view, correctly come to the conclusion that Section 4(b) of the Maintenance Act does not repeal or affect in any manner the provisions contained in Section 488, Cr.P.C.*"
>
> (emphasis supplied)

[2] (1969) 3 SCC 802.

While it is true that a party is not precluded from approaching the Court under one or more enactments, since the nature and purpose of the relief under each Act is distinct and independent, it is equally true that the simultaneous operation of these Acts, would lead to multiplicity of proceedings and conflicting orders. This would have the inevitable effect of overlapping jurisdiction. This process requires to be streamlined, so that the respondent / husband is not obligated to comply with successive orders of maintenance passed under different enactments.

For instance, if in a previous proceeding under Section 125 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 *pendente lite* is filed under Section 24 of that Act, or for maintenance under Section 25, the payment awarded in the earlier proceeding must be taken note of, while deciding the amount awarded under HMA.

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 solemnize 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 on a weekly or monthly basis during the pendency of the matrimonial proceedings. The Court would determine the quantum of maintenance depending on the income of the husband, and award such amount as may seem reasonable.

Section 36 reads as:

> *"**S.36. Alimony pendente lite**.—Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses*

of the proceeding, it may, on the application of the wife, order the husband to pay her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as, having regard to the husband's income, it may seem to the court to be reasonable.
Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband."

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

"S. 37. Permanent alimony and maintenance.—*(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support if necessary, by a charge on the husband's property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability, the conduct of the parties and other circumstances of the case, as it may seem to the court to be just.*
(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), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.
(3) If the district court is satisfied that the wife in whose favour an order has been made under this Section has remarried or is not leading a chaste life, it may, at the instance of the husband, vary, modify or rescind any such order and in such manner as the court may deem just."

(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 pre-requisite is that the applicant does not have independent income which is sufficient for her or his support, during the pendency of the *lis.*

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

Section 24 reads as:

> ***"24. Maintenance pendente lite and expenses of proceedings.—***
> *Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable.*
> *Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be."*
>
> (emphasis supplied)

The proviso to Section 24 providing a time line 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, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.*
> *(2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.*
> *(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she*

has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just."

(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 ("*HAMA*")

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 this Act, shall be entitled to be maintained by her husband during her lifetime.

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

(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 willfully 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) [****]

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;
(f) if he has ceased to be a Hindu by conversion to another religion;
(g) if there is any other cause justifying living separately.
(3) A Hindu wife shall not be entitled to separate residency and maintenance from her husband if she is unchaste or ceases 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. [3]

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 came up for consideration by the Supreme Court in *Chand Dhawan* v *Jawaharlal Dhawan*.[4] The Supreme Court, while considering the various laws relating to marriage amongst Hindus, discussed the scope of applications under the HMA and HAMA in the following words :

"23. …Section 18(1) of the Hindu Adoptions and Maintenance Act, 1956 entitles a Hindu wife to claim maintenance from her husband during her life-time. 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 misbehaviors enumerated therein or on account of his being in one of objectionable conditions as mentioned therein. So while sustaining her marriage and preserving her marital status, the wife is entitled to claim maintenance from her husband. On the other hand, under the Hindu Marriage Act, in contrast, her claim for maintenance pendente lite is durated on the pendency of a litigation of the kind envisaged under Sections 9 to 14 of the Hindu Marriage Act, and her claim to permanent maintenance or alimony is based on the supposition that either her marital status has been strained or affected by passing a decree for restitution of conjugal rights or judicial separation in favour or against her, or her marriage stands dissolved by a decree of nullity or divorce, with or without her

[3] *Panditrao Chimaji Kalure* v *Gayabai* (2002) 2 Mah LJ 53.
[4] (1993) 3 SCC 406.

consent. Thus when her marital status is to be affected or disrupted the court does so by passing a decree for or against her. On or at the time of the happening of that event, the court being seized of the matter, invokes its ancillary or incidental power to grant permanent alimony. Not only that, the court retains the jurisdiction at subsequent stages to fulfill this incidental or ancillary obligation when moved by an application on that behalf by a party entitled to relief. The court further retains the power to change" or alter the order in view of the changed circumstances. Thus the whole exercise is within the gammit of a diseased or a broken marriage. And in order to avoid conflict of perceptions the legislature while codifying the Hindu Marriage Act preserved the right of permanent maintenance in favour of the husband or the wife, as the case may be, dependent on the court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. In other words without the marital status being affected or; disputed by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption. The wife's claim to maintenance necessarily has then to be agitated under the Hindu Adoptions and Maintenance Act, 1956 which is a legislative measure later in point of time than the Hindu Marriage Act, 1955, though part of the same socio-legal scheme revolutionizing the law applicable to Hindus…."

(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; (a) from the estate of her husband, or her father or mother, or (b) from her son or daughter, if any, or his or her estate.

Section 20 of HAMA provides for maintenance of children and aged parents. Section 20 casts a statutory obligation on a Hindu male to maintain an unmarried daughter, who is unable to maintain herself out of her own earnings, or other property. In *Abhilasha* v *Parkash & Ors*.,[5] a three-judge bench of this Court held that Section 20(3) is a recognition of the principles of Hindu law, particularly the obligation of the father to maintain an unmarried 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. 125 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

[5] Decided on 15.10.2020 in Criminal Appeal No.615/2020.

of any physical or mental abnormality or injury, unable to maintain herself, under Section 125(1)(c), the father would be obligated to maintain her even after she has attained majority. The maintenance contemplated under HAMA is a wider concept. Section 3(b) contains an inclusive definition of maintenance including marriage expenses. The purpose and object of Section 125 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 consideration set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.*
>
> *(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—*
> *(a) the position and status of the parties;*
> *(b) the reasonable wants of the claimant;*
> *(c) if the claimant is living separately, whether the claimant is justified in doing so;*
> *(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earning or from any other source;*
> *(e) the number of persons entitled to maintenance under this Act.*
>
> *(3) In determining the amount of maintenance, if any, to be awarded to a dependant 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 dependant;*
> *(c) the degree of relationship between the two;*
> *(d) the reasonable wants of the dependant;*
> *(e) the past relations between the dependant and the deceased;*
> *(f) the value of the property of the dependant and any income derived from such property, or from his or her earnings or from any other course;*

(g) the number of dependants entitled to maintenance under this 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, 1956.

In *Bhagwan Dutt* v *Kamla Devi*[6] 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 :

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

Prior to the amendment of Section 125 in 2001, there was a ceiling on the amount which could be awarded as maintenance, being Rs. 500 "in the whole". In view of the rising costs of living and inflation rates, the ceiling of Rs. 500 was

[6] (1975) 2 SCC 386.

done away by the 2001 Amendment Act. The Statement of Objects and Reasons of the Amendment Act states that the wife had to wait for several years before being granted maintenance. Consequently, the Amendment Act introduced an express provision for grant of "interim maintenance". The Magistrate was vested with the power to order the respondent to make a monthly allowance towards interim maintenance during the pendency of the petition.

Under sub-section (2) of Section 125, the Court is conferred with the discretion to award payment of maintenance either from the date of the order, or from the date of the application.

Under the third proviso to the amended Section 125, the application for grant of interim maintenance must be disposed of as far as possible within sixty days' from the date of service of notice on the respondent.

The amended Section 125 reads as under :

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

(1) If any person having sufficient means neglects or refuses to maintain-

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

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

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

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

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allow for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct :

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation. – For the purposes of this Chapter,-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875); is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(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.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. – If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be a just ground for his wife' s refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

(emphasis supplied)

In *Chaturbhuj* v *Sitabai*[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 *Bhuwan Mohan Singh* v *Meena & Ors*.[8] this Court held that Section 125 of the Cr.P.C. was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

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 *Chanmuniya* v *Virendra Kumar Singh Kushwaha & Anr*.[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 necessities of a valid marriage, such a woman would be entitled to maintenance. A man should not be allowed to benefit from legal loopholes, by enjoying the advantages of a *de facto* marriage, without undertaking the duties and obligations of such marriage. A broad and expansive interpretation 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] (2008) 2 SCC 316.
[8] (2015) 6 SCC 353.
[9] (2011) 1 SCC 141.
This judgment was referred to a larger bench.

maintenance u/S. 125 Cr.P.C. The Court relied on the Malimath Committee Report on Reforms of Criminal Justice System published in 2003, which recommended that evidence regarding a man and woman living together for a reasonably long period, should be sufficient to draw the presumption of marriage.

The law presumes in favour of marriage, and against concubinage, when a man and woman cohabit continuously for a number of years. Unlike matrimonial proceedings where strict proof of marriage is essential, in proceedings u/S. 125 Cr.P.C. such strict standard of proof is not necessary.[10]

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

The D.V. Act stands on a separate footing from the laws 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 *Hiral P. Harsora & Ors*. v *Kusum Narottamdas Harsora & Ors*.[11] this 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 circumstance, be by one woman on another. Section 17(2) provides that the aggrieved person cannot be

[10] *Kamala & Ors.* v. *M.R. Mohan Kumar* (2019) 11 SCC 491.
[11] (2016) 10 SCC 165.

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 proviso 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. Velusamy* v *D. Patchaiammal.*[12] It was opined that a common law marriage is one which requires that although a couple may not be formally married : (a) the couple hold themselves out to society as being akin to spouses; (b) the parties must be of legal age to marry; (c) the parties must be otherwise qualified to enter into a legal marriage, including being unmarried; and (d) the parties must have voluntarily cohabited, and held themselves out to the world as being akin to spouses for a significant period of time. However, not all live-in relationships would amount to a relationship in the nature of marriage to avail the benefit of 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", this Court in *Indra Sarma* v. *V.K.V. Sarma*[13] laid down the following guidelines : (a) duration of period of relationship; (b) shared household; (c) domestic arrangements; (d) pooling of resources and financial arrangements; (e) sexual relationship; (f) children; (g) socialisation in public and (h) intention and conduct of the parties. The Court held that these guidelines were only indicative, and not exhaustive.

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

[12] (2010) 10 SCC 469.
[13] (2013) 15 SCC 755.

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

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

"17. Right to reside in a shared household:
(1) Notwithstanding anything contained household: in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.
(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law."

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

A three-judge bench of this Court in *Satish Chander Ahuja* v *Sneha Ahuja*[14] has overruled the judgment in *S.R.Batra* v *Taruna Batra,*[15] wherein a two judge bench held that the wife is entitled to claim a right of residence in a "shared household" u/S.17 (1), which would only mean the house belonging to, or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. In *Satish Chander Ahuja* (supra), the Court has held that although the judgment in *S.R. Batra* (supra) noticed the definition of shared household under Section 2(s), it did not advert to different parts of the definition, which makes it clear that there was no requirement for the shared household to be owned singly or jointly by the husband, or taken on rent by the husband. If

[14] Decided on 15.10.2020 in C.A. No. 2483/2020 by a bench comprising of Hon'ble Justices Ashok Bhushan, R. Subhash Reddy and M.R.Shah.
[15] (2007) 3 SCC 169.

the interpretation given in *S.R. Batra* is accepted, it would frustrate the object of the Act. The Court has taken the view that the definition of "shared household" in Section 2(s) is an exhaustive definition. The "shared household" is the household which is the dwelling place of the aggrieved person in present time. If the definition of "shared household" in Section 2(s) is read to mean all the houses where the aggrieved person has lived in a domestic relationship 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 "at any stage has lived", is with the intent of not denying protection to an aggrieved woman merely on the ground that she was not living there on the date of the application, or on the date when the Magistrate passed the order 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. Mere fleeting or casual living at different places would not make it a shared household. The intention of the parties and the nature of living, including the nature of the household, must be considered, to determine as to whether the parties intended to treat the premises as a "shared household" or not. Section 2(s) r.w. Sections 17 and 19 grant an entitlement in favour of an aggrieved woman to the right of residence in a "shared household", irrespective of her having any legal interest in the same or not. From the definition of "aggrieved person" and "respondent", it was clear that :

(i) it is not the requirement of law that the aggrieved person may either own the premises jointly or singly, or by tenanting it jointly or singly;

(ii) the household may belong to a joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title, or interest in the shared household;

(iii) the shared household may either be owned, or tenanted by the respondent singly or jointly.

The right to residence u/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 reliefs.***-
(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and such relief may include, but is not limited to,-
(a) the loss of earnings;
(b) the medical expenses;
(c)the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person; and
(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.
(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.
(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require."

(emphasis supplied)

Section 20(1)(d) provides that maintenance granted under the 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 (6) of Section 20, the Magistrate may direct the employer or debtor of the respondent, to directly pay the aggrieved person, or deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit

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

Section 22 provides that the Magistrate may pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence perpetrated by the respondent.

Section 23 provides that the Magistrate may grant an *ex parte* order, including an order under Section 20 for monetary relief. The Magistrate must be satisfied that the application filed by the aggrieved woman discloses that the respondent is committing, or has committed an act of domestic violence, or that there is a likelihood that the respondent may commit an act of domestic violence. In such a case, the Magistrate is empowered to pass an *ex parte* order on the basis of the affidavit of the aggrieved woman.

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 proceedings 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 *Ashok Singh Pal* v *Manjulata,*[16] the Madhya Pradesh High Court held that the remedies available to an aggrieved person under S. 24 of the HMA is independent of S. 125 of the Cr.P.C. In an

[16] AIR 2008 MP 139.

application filed by the husband for adjustment of the amounts awarded in the two proceedings, it was held that the question as to whether adjustment is to be granted, is a matter of judicial discretion to be exercised by the Court. There is nothing to suggest as a thumb rule which lays down as a mandatory requirement that adjustment or deduction of maintenance awarded 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 *Mohan Swaroop Chauhan* v *Mohini.*[17]

Similarly, the Calcutta High Court in *Sujit Adhikari* v *Tulika Adhikari*[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 *Chandra Mohan 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.

(ii) On the other hand, the Bombay and Delhi High Courts, have held that in case of parallel proceedings, adjustment or set-off must take place.

The Bombay High Court in a well-reasoned judgment delivered in *Vishal* v *Aparna & Anr.*,[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 MP LJ 179.
[18] (2017) SCC OnLine Cal 15484.
[19] 2015 SCC OnLine Cal 9554.
[20] 2018 SCC OnLine Bom 1207.

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 26 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 :

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

It was held that while determining the quantum of maintenance awarded u/S.125 Cr.P.C., the Magistrate would take into consideration the interim 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 *BD*[21] 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 legislative mandate envisages grant of maintenance to the wife under various statutes. It was not the intention of the legislature that once an order is passed in either of the

[21] 2019 VII AD (Delhi) 466.

maintenance proceedings, the order would debar re-adjudication of the issue of maintenance in any other proceeding. In paragraphs 16 and 17 of the judgment, it was observed that :

> *"16. A conjoint reading of the aforesaid Sections 20, 26 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 to the aggrieved person (s) under the DV Act which would also be in addition to any order of maintenance arising out of Section 125 of Cr.P.C.*
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> *17. On the converse, if any order is passed by the Family Court under Section 24 of HMA, the same would not debar the Court in the proceedings arising out of DV Act or proceedings under Section 125 of Cr.P.C. instituted by the wife/aggrieved person claiming maintenance. However, it cannot be laid down as a proposition of law that once an order of maintenance has been passed by any Court then the same cannot be re-adjudicated upon by any other Court. The legislative mandate envisages grant of maintenance to the wife under various statutes such as HMA, Hindu Adoption and Maintenance Act, 1956 (hereinafter referred to as 'HAMA'), Section 125 of Cr.P.C. as well as Section 20 of DV Act. As such various statutes have been enacted to provide for the maintenance to the wife and it is nowhere the intention of the legislature that once any order is passed in either of the proceedings, the said order would debar re adjudication of the issue of maintenance in any other Court."*
>
> (emphasis supplied)

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

Similarly, in *Tanushree & Ors.* v *A.S.Moorthy,*[22] the Delhi High Court was considering a case where the Magistrate's Court had *sine die* adjourned the proceedings u/S. 125 Cr.P.C. on the ground that parallel proceedings for maintenance under the D.V. 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 D.V. Act indicates that while considering an application u/S. 12 of the D.V. Act, the

[22] 2018 SCC OnLine Del 7074.

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 *sine die*. 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 :

> *"5. Reading of Section 20(1)(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 catered for that eventuality and laid down that at the time of consideration of an application for grant of maintenance under Section 12 of the 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 *Rakesh Malhotra* v *Krishna Malhotra*.[23] 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 :

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

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

[23] 2020 SCC OnLine SC 239.

(iii) In *Nagendrappa Natikar* v *Neelamma*[24] this Court considered a case where the wife instituted a suit under Section 18 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 compromise or otherwise would not foreclose the remedy u/S. 18 of HAMA.

(iv) In *Sudeep Chaudhary* v *Radha Chaudhary*[25] 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 inequitable 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 subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.

[24] (2014) 14 SCC 452.
[25] (1997) 11 SCC 286.

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the 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) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days' from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that applications remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous 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 *prima facie* assessment of the amount to be awarded. It is often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.

It has therefore become necessary to lay down a procedure to streamline the proceedings, since a dependant wife, who has no other source of income, has to take recourse to borrowings from her parents / relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.

(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 Affidavits of Disclosure, the Court would be in a position to make an objective assessment of the approximate amount to be awarded towards maintenance at the interim stage.

(vi) The Delhi High Court in a series of judgments beginning with *Puneet Kaur* v *Inderjit Singh Sawhney*[26] and followed in *Kusum Sharma* v *Mahinder Kumar Sharma*[27] ("*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*,[28] 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*,[29] 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*[30] the Court took notice that the filing of Affidavits alongwith pleadings gave an unfair advantage to the party who files

[26] ILR (2012) I Delhi 73.
[27] (2014) 214 DLT 493.
[28] (2015) 217 DLT 706.
[29] MANU/DE/2406/2017.
[30] 2017 – (2018) 246 DLT 1.

the affidavit subsequently. In this judgment, it was clarified that the Affidavit must be filed simultaneously by both parties. In *Kusum Sharma V*[31] 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 entirely different from the one applicable to rural areas, or tribal areas.

For this purpose, a comprehensive Affidavit of Disclosure of Assets and Liabilities is being attached as **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 matrilineal system of society. The population is comprised of three tribes viz. the Khasis, Jaintia and Garo tribes. In Meghalaya, the youngest daughter is the

[31] Decided by the Delhi High Court *vide* Judgment dated 06.08.2020.

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 10(26) of the Income Tax Act 1961, the tribals residing in this State are exempted from payment of income tax.

The Meghalaya State Legal Services Authority has suggested that the declaration in Meghalaya be made in the format enclosed with this judgment as **Enclosure III**.

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

(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 contumacious in delaying the proceedings.[32]

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;

[32] *Kaushalya* v *Mukesh Jain*, Criminal Appeal Nos. 1129-1130 / 2019 decided *vide* Judgment 24.07.2019.

(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 Affidavits 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 C.P.C 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 I.A. for Interim Maintenance by a reasoned

order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

(k) A professional Marriage Counsellor 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 any spouse / grandparents in favour of the children, this would also be taken into consideration while deciding the final child support.

III Criteria for determining quantum of maintenance

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

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 adult members of the family; reasonable costs of litigation for a non-working wife.[33]

In *Manish Jain* v *Akanksha Jain*[34] this Court held that the financial position of the parents of the applicant-wife, would not be material while determining the quantum of maintenance. An order of interim maintenance is conditional on the circumstance that the wife or husband who makes a claim has no independent income, sufficient for her or his support. It is no answer to a claim of maintenance that the wife is educated and could support herself. The court must take into consideration the status of the parties and the capacity of the spouse to pay for her or his support. Maintenance is dependent upon factual situations; the Court should mould the claim for maintenance based on various factors brought before it.

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, liabilities if any, would

[33] Refer to *Jasbir Kaur Sehgal* v *District Judge, Dehradun & Ors.* (1997) 7 SCC 7.
Refer to *Vinny Paramvir Parmar* v *Paramvir Parmar* (2011) 13 SCC 112.
[34] (2017) 15 SCC 801.

be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income *ipso facto* does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.[35]

(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.[36]

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.

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

[35] *Reema Salkan* v *Sumer Singh Salkan* (2019) 12 SCC 303.
[36] *Chaturbhuj* v *Sita Bai* (2008) 2 SCC 316.

(v) The Delhi High Court in *Bharat Hedge* v *Smt. Saroj Hegde*[37] laid down the following factors to be considered for determining maintenance :

> "*1. Status of the parties.*
> *2. Reasonable wants of the claimant.*
> *3.The independent income and property of the claimant.*
> *4. The number of persons, the non-applicant has to maintain.*
> *5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.*
> *6. Non-applicant's liabilities, if any.*
> *7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.*
> *8. Payment capacity of the non-applicant.*
> *9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.*
> *10. The non-applicant to defray the cost of litigation.*
> *11. The amount awarded u/s 125 Cr.PC is adjustable against the amount awarded u/ 24 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, where parties have endured the relationship for several years, it would be a relevant factor to be taken into consideration. On termination of the relationship, if the wife is educated and professionally qualified, but had to give up her employment opportunities to look after the needs of the family being the primary caregiver to the minor children, and the elder members of the family, this factor would be required to be given due importance. This is of particular relevance in contemporary society, given the highly competitive industry standards, the separated wife would be required to undergo fresh training to acquire marketable skills and re-train herself to secure a job in the paid workforce to rehabilitate herself. With advancement of age, it would be difficult for a dependant wife to get an easy entry into the work-force after a break of several years.

[37] 140 (2007) DLT 16.

(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 rented jointly or singly by both, or singly by either of the spouses; or a joint family house, of which the respondent is a member.

The right of a woman to reside in a "shared household" defined under Section 2(s) entitles the aggrieved woman for right of residence in the shared household, irrespective of her having any legal interest in the same. This Court in *Satish Chander Ahuja* v *Sneha Ahuja*[38] (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)(f) 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

[38] Civil Appeal No. 2483 / 2020 decided *vide* Judgment dated 15.10.2020.

respondent to pay the rent and other payments, having regard to the financial needs and resources of the parties.

(c) Where wife is earning some income

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 *Shailja & Anr.* v *Khobbanna,*[39] 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.[40] Sustenance does not mean, and cannot be allowed to mean mere survival.[41]

In *Sunita Kachwaha & Ors.* v *Anil Kachwaha* [42] the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

The Bombay High Court in *Sanjay Damodar Kale* v *Kalyani Sanjay Kale*[43] while relying upon the judgment in *Sunita Kachwaha* (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

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 Bodhraj* v *Shila Rani Chander*

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[39] (2018) 12 SCC 199.
See also Decision of the Karnataka High Court in *P. Suresh* v *S. Deepa & Ors*., 2016 Cri LJ 4794.
[40] *Chaturbhuj* v *Sita Bai*, (2008) 2 SCC 316.
[41] *Vipul Lakhanpal* v *Smt. Pooja Sharma*, 2015 SCC OnLine HP 1252.
[42] (2014) 16 SCC 715.
[43] 2020 SCC OnLine Bom 694.

Prakash.[44] The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn by the Court.

This Court in *Shamima Farooqui* v *Shahid Khan*[45] cited the judgment in *Chander 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 courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extra-curricular / coaching classes, and not an overly extravagant amount which may be claimed.

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

(e) Serious disability or ill health

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

[44] AIR 1968 Delhi 174.
[45] (2015) 5 SCC 705.

IV Date from which Maintenance to be awarded

There is no provision in the HMA with respect to the date from which an Order of maintenance may be made effective. Similarly, Section 12 of the D.V. Act, does not provide the date from which the maintenance is to be awarded.

Section 125(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. [46]

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 laws 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 *Susmita Mohanty* v *Rabindra Nath Sahu*[47] held that the legislature intended to provide a summary, quick and comparatively inexpensive remedy to the neglected person. Where a litigation is prolonged, either on account of the conduct of the opposite party, or due to the heavy docket in Courts, or for unavoidable reasons, it would be unjust and contrary to the object of the provision, to provide maintenance from the date of the order.

In *Kanhu Charan Jena* v. *Smt. Nirmala Jena*[48] , the Orissa High Court was considering an application u/S. 125 Cr.P.C., wherein it was held that even though

[46] *K. Sivaram* v *K. Mangalamba & Ors.*1989 (1) APLJ (HC) 604.
[47] 1996 (I) OLR 361.
[48] 2001 Cri LJ 879.

the decision to award maintenance either from the date of application, or from the date of order, was within the discretion of the Court, it would be appropriate to grant maintenance from the date of application. This was followed in *Arun Kumar Nayak* v *Urmila Jena,*[49] wherein it was reiterated that dependents were entitled to receive maintenance from the date of application.

The Madhya Pradesh High Court in *Krishna Jain* v *Dharam Raj Jain*[50] held that a wife may set up a claim for maintenance to be granted from the date of application, and the husband may deny it. In such cases, the Court may frame an issue, and decide the same based on evidence led by parties. The view that the "normal rule" was to grant maintenance from the date of order, and the exception was to grant maintenance from the date of application, would be to insert something more in Section 125(2) Cr.P.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 Cr.P.C. from the date of application, was extended to HAMA by the Allahabad High Court in *Ganga Prasad Srivastava* v *Additional District Judge, Gonda & Ors.*[51] The Court held that the date of application should always be regarded as the starting point for payment of maintenance. The Court was considering a suit for maintenance 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 paucity of time of the Court, or on account of the conduct of one of the parties. In this case, there was a delay of seven years in disposing of the suit, and the wife could not be

[49] (2010) 93 AIC 726 (Ori).
[50] 1993 (2) MPJR 63.
[51] 2019 (6) ADJ 850.

made to starve 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 *Rukmani*[52] held that where the wife is unemployed and is incurring expenses towards maintaining herself and the minor child / children, she is entitled to receive maintenance from the date of application. Maintenance is awarded to a wife to overcome the financial crunch, which occurs on account of her separation from her husband. It is neither a matter of favour to the wife, nor any charity done by the husband.

(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 for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be."*
>
> (emphasis supplied)

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.[53]

In *Bina Devi* v *State of U.P.*,[54] 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.

[52] Crl.Rev.P. 851/2019 decided by the Delhi High Court *vide* Order dated 28.11.2019.
[53] *Bina Devi & Ors.* v *State of Uttar Pradesh & Ors.* (2010) 69 ACC 19.
[54] (2010) 69 ACC 19.

The Madhya Pradesh High Court in *Amit Verma* v *Sangeeta Verma & Ors.*[55] directed that maintenance ought to be granted from the date of the order.

(c) From the date of service of summons

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

The Kerala High Court in *S. Radhakumari* v *K.M.K. Nair*[56] was considering an application for interim maintenance preferred by the wife in divorce proceedings filed by the husband. The High Court held that maintenance must be awarded to the wife from the date on which summons were served in the main divorce petition. The Court relied upon the judgment of the Calcutta High Court in *Samir Banerjee* v *Sujata Banerjee*,[57] 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 *Gouri Das* v *Pradyumna Kumar Das*[58] 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 *Kalpana Das* v *Sarat Kumar Das*,[59] 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

[55] CRR No. 3542/2019, decided by the Madhya Pradesh High Court *vide* Order dated 08.01.2020.
[56] AIR 1983 Ker 139.
[57] 70 CWN 633.
[58] 1986 (II) OLR 44.
[59] AIR 2009 Ori 133.

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

> *"9. ...Learned Judge. Family Court has not assigned any reason as to why he passed the order of interim maintenance w.e.f. the date of order. When admittedly the parties are living separately and prima facie it appears that the Petitioners have no independent source of income, therefore, in our view order should have been passed for payment of interim maintenance from the date of appearance of the Opposite Party-husband..."*
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> (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 interests of justice and fair play that maintenance is awarded from the date of the application.

In *Shail Kumari Devi and Ors.* v *Krishnan Bhagwan Pathak*[60], this Court held that the entitlement of maintenance should not be left to the uncertain date of disposal of the case. The enormous delay in disposal of proceedings justifies the award of maintenance from the date of application. In *Bhuwan Mohan Singh* v *Meena*[61], this Court held that repetitive adjournments sought by the husband in that case resulted in delay of 9 years in the adjudication of the case. The delay in adjudication was not only against human rights, but also against the basic embodiment of dignity of an individual. The delay in the conduct of the proceedings would require grant of maintenance to date back to the date of application.

[60] 2008 9 SCC 632.
[61] 2015 6 SCC 353.

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

In *Badshah* v *Urmila Badshah Godse*[62], the Supreme Court was considering the interpretation of Section 125 Cr.P.C. The Court held :

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

[62] (2014) 1 SCC 188.

V 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 defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. The Bombay High Court in *Sushila Viresh Chhawda* v *Viresh Nagsi Chhawda*[63] held that :

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

(i) An application for execution of an Order of Maintenance can be filed under the following provisions :

(a) Section 28 A of the Hindu Marriage Act, 1956 r.w. Section 18 of the Family Courts Act, 1984 and Order XXI Rule 94 of the CPC for executing an Order passed under Section 24 of the Hindu Marriage Act (before the Family Court);

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

(c) Section 128 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 recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.

Striking off the Defence

(i) Some Family Courts have passed orders for striking off the defence of the respondent in case of non-payment of maintenance, so as to facilitate speedy disposal of the maintenance petition.

[63] AIR 1996 Bom 94.

In *Kaushalya* v *Mukesh Jain*[64], 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*[65] 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 :

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

(iii) The Punjab & Haryana High Court in *Mohinder Verma* v *Sapna,*[66] discussed the issue of striking off the defence in the following words :

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

[64] Criminal Appeal Nos. 1129-1130 / 2019 decided *vide* Judgment dated 24.07.2019.
[65] AIR 1996 P&H 175.
[66] MANU/PH/3684/2014.

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

(emphasis supplied)

(iv) The Delhi High Court in *Satish Kumar* v *Meena*[67] held that the Family Court had inherent powers to strike off the defence of the respondent, to ensure that no abuse of process of the court takes place.

The Delhi High Court in *Smt. Santosh Sehgal* v *Shri Murari Lal Sehgal,*[68] framed the following issue for consideration : *"Whether the appeal against the decree of divorce filed by the appellant-wife can be allowed straightway without hearing the respondent-husband in the event of his failing to pay interim maintenance and litigation expenses granted to the wife during the pendency of the appeal."*

The reference was answered as follows :

"5.The reference to the portion of the judgment in Bani's case extracted here-in-above would show that the Punjab and Haryana High Court and Orissa Page 2216 High Court have taken an unanimous view that in case the husband commits default in payment of interim maintenance to his wife and children then he is not entitled to any matrimonial relief in proceedings by or against him. The view taken by Punjab and Haryana High Court in Bani's case has been followed by a Single Judge of this Court in Satish Kumar v. Meena . We tend to agree with this view as it is in consonance with the first principle of law. We are of the view that when a husband is negligent and does not pay maintenance to his wife as awarded by the Court, then how such a person is entitled to the relief claimed by him in the matrimonial proceedings. We have no hesitation in holding that in case the husband fails to pay maintenance and litigation expenses to his wife granted by the Court during the pendency of the appeal, then the appeal filed by the wife against the decree of divorce granted by the trial court in 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 hearing the respondent.

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[67] 2001 (60) DRJ 246.
[68] AIR 2007 Delhi 210.

(v) The Punjab and Haryana High Court in *Gurvinder Singh* v *Murti & Ors.*[69] was considering a case where the trial court stuck off the defence of the husband for non-payment of ad-interim maintenance. The High Court set aside the order of the trial court, and held that instead of following the correct procedure for recovery of interim maintenance as provided u/S. 125 (3) or Section 421 of the Cr.P.C., the trial court erred in striking off the defence of the husband. The error of the court did not assist in recovery of interim maintenance, but rather prolonged the litigation between the parties.

(vi) The issue whether defence can be struck off in proceedings under Section 125 Cr.P.C. came up before the Madhya Pradesh High Court in *Venkateshwar Dwivedi* v *Ruchi Dwivedi.*[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 defence. A statutory remedy for recovery of maintenance was available, and the power to strike off defence 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 defence 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, 55, 58, 60 read with Order XXI.

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[69] *Gurvinder Singh* v *Murti & Ors.* I (1990) DMC 559.

[70] II (2018) DMC 103 MP.
Karnataka High Court affirmed this view in *Ravindra Kumar* v *Renuka & Anr*. 2009 SCC OnLine Kar 481.

[71] 2007(4) ILR (Kerala) 389.
See also *Sakeer Hussain T.P.* v *Naseera & Ors*., 2016 (4) ILR (Kerala) 917.

Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the Courts find default to be wilful and contumacious, particularly to a dependant unemployed wife, and minor children.

Contempt proceedings for wilful disobedience may be initiated before the appropriate Court.

VI Final Directions

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

(a) Issue of overlapping jurisdiction

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

(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 as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the 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 enumerated in Part B – III of the judgment.

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

(d) Date from which maintenance is to be awarded

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

(e) Enforcement / Execution of orders of maintenance

For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(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 Ld. *Amici Curiae* Ms. Anitha Shenoy 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.

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(INDU MALHOTRA, J.)

New Delhi,
November 4, 2020

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(R. SUBHASH REDDY J.)