

**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)**

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 ...Court of India

**RAJNESH****...APPELLANT****Versus****NEHA & Anr.****...RESPONDENTS****INDEX**

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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 willful 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. In spite of time frames being prescribed by various statutes for disposal of interim applications, we have noticed, in practice that in a vast majority of cases, the applications are not disposed of within the time frame prescribed. To address various issues which arise for consideration in applications for grant of maintenance / interim maintenance, it is necessary to frame guidelines to ensure that there is uniformity and consistency in deciding the same. To seek assistance on these issues, we have appointed Ms. Anitha Shenoy and Mr. Gopal 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.*<sup>1</sup> 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*

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<sup>1</sup>(1978) 4 S.C.C. 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.*<sup>1</sup>, 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)

<sup>1</sup>(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 prerequisite 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.*”

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.<sup>3</sup>

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*.<sup>4</sup> 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 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*

<sup>3</sup> *Pandit Rao Chimaji Kulkarni v. Ghawabai* (2002) 2 Mah LJ 53.  
<sup>4</sup> (1993) 2 SCC 406.

*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.*<sup>5</sup> 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 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

<sup>5</sup> Decided on 15.10.2020 in Criminal Appeal No.615/2020

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*<sup>6</sup> 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 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

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<sup>6</sup> (1975) 2 SCC 386.



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*<sup>7</sup> this Court held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy

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<sup>7</sup> (2008) 2 SCC 316.

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 *Bhuvan Mohan Singh v Meena & Ors.*<sup>8</sup> 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 *Channuniya v Urendra Kumar Singh Kushwaha & Anr.*<sup>9</sup> 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 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

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<sup>8</sup> (2015) 6 SCC 353.

<sup>9</sup> (2011) 1 SCC 141.

This judgment was referred to a larger bench.