LAW ON

Maintenance To Wives & Others

(Sec. 125 CrPC & Special Acts)

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1. **<u>Laws applicable to the matters of maintenance</u> :** Various laws applicable to the matters of maintenance to wives, parents, sons, daughters and other dependants and the Acts covered within the jurisdiction of the Family Courts established under the provisions of the Family Courts Act, 1984 are as under **:**

(i) Family Courts Act, 1984
(ii) Hindu Adoptions And Maintenance Act, 1956
(iii) Code of Criminal Procedure, 1973 (Sections 125 to 128)
(iv) Protection of Women From Domestic Violence Act, 2005
(v) Protection of Women From Domestic Violence Rules, 2006
(vi) Hindu Marriage Act, 1955
(vii) Muslim Women (Protection of Rights on Divorce) Act, 1986
(viii) Muslim Women (Protection of Rights on Divorce) Rules, 1986
(ix) Maintenance And Welfare of Parents And Senior Citizens Act, 2007
(x) Maintenance Orders Enforcement Act, 1921
(xi) Special Marriage Act, 1954
(xii) Divorce Act, 1869
(xiii) Parsi Marriage And Divorce Act, 1936
(xiv) Dissolution of Muslim Marriage Act, 1939
(xv) Hindu Minority And Guardianship Act, 1956
(xvi) Guardians And Wards Act, 1890
(xvii) Christian Marriage Act, 1872
(xviii) Foreign Marriage Act, 1969
(xix) Muslim Women Personal Law (Shariat) Application Act, 1937
(xx) Prohibition of Child Marriage Act, 2006
(xxi) Anand Marriage Act, 1909
(xxii) Dowry Prohibition Act, 1961
(xxiii) Marriage Validation Act, 1892
(xxiv) Converts Marriage Dissolution Act, 1866
(xxv) Judicial Pronouncements of Courts

2(A). **<u>Provisions of the Family Courts Act, 1984 should be construed liberally</u> :** It is well settled principle of law that the jurisdiction of a court created especially

for resolution of disputes of certain kinds should be construed liberally. The restricted meaning if ascribed to Explanation (c) to sub-section (1) of Section 7 of the Family Courts Act, 1984 would frustrate the object wherefor the Family Courts were set up. See **: K.A. Abdul Jaleel Vs. T.A. Shahida, AIR 2003 SC 2525.**

2(B). **Nature of provisions u/s 125 CrPC is social justice legislation :** Nature of provisions u/s 125 CrPC is a social justice legislation. Distinct approach should be adopted while dealing with cases u/s 125 CrPC. Drift in approach from "adversarial" litigation to social context adjudication is needed. See :

(i) Badshah Vs. Urmila Badshah Godse & Another, (2014) 1 SCC 188

(ii) Dwarika Prasad Satpathi Vs. Bidyut Prava Dixit, AIR 1999 SC 3348

2(C) **Nature of proceeding u/s 125 Cr PC is civil :**The jurisdiction of magistrate under chapter IX Cr PC is not strictly a criminal jurisdiction. Proceedings u/s 125 CrPC are civil in nature. See :

(i) Vijay Kumar Prasad Vs. State of Bihar, (2004) 5 SCC 196.

(ii) Savitri Vs. Govind Singh Rawat, (1985) 4 SCC 337.

2(D). **Section 125 CrPC to be construed liberally :** Section 125 CrPC is measure of social legislation and is to be construed liberally for the welfare and benefit of the wife & children. See :

(i) Shantha Vs. B.G. Shivananjappa, (2005) 4 SCC 468

(ii) Savitaben Vs. State of Gujarat, (2005) 3 SCC 636

2(E). **Proceeding u/s 125 CrPC summary in nature :** Proceeding u/s 125 CrPC is summary in nature and intended to provide speedy remedy to wife. See :

(i) Nagendrappa Natikar Vs. Neelamma, AIR 2013 SC 1541

(ii) Dwarika Prasad Satpathi Vs. Bidyut Prava Dixit, AIR 1999 SC 3348

2 (F) **Strict rule of relevancy and admissibility under Evidence Act not applicable to the proceedings before the family court** : Interpreting Section 14 of the Family Courts Act, 1984, a Division Bench of the Kerala High Court has held that the strict rules of relevancy and admissibility of evidence under the Evidence Act are not applicable to the proceedings before the family court. In the event of inconsistency between the provisions of the two Acts i.e. the Family Court Act and the Evidence Act, provisions of the Family Court Act shall prevail. Non-

obstante clause in Section 65-B (1) of the Evidence Act does not extend beyond the Evidence Act and does not apply to the Family Court. Family courts are bound to adhere to the fundamental rules of evidence based on logic, fairness and expediency and also the principles of natural justice. See: **Pramod E.K. Vs. Louna V.C., AIR 2019 Kerala 85 (DB)**

2(G). <u>Complaint for offence of cruelty u/s 498-A IPC can be filed by wife at the place of her parents or where she took shelter after driven away from the house of her-in-laws</u> : Complaint for offence of cruelty u/s 498-A IPC can be filed in the court where wife takes shelter after leaving or driven away from the matrimonial home. See: **Rupali Devi Vs. State of UP, AIR 2019 SC 1790 (Three-Judge Bench)**

3(A). <u>Strict proof of marriage should not be insisted as pre-condition for maintenance u/s 125 CrPC</u> : Construing the term 'wife' broad and expansive interpretation should be given to 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 maintenance. See : **Chanmuniya Vs. Virender Kumar Singh Kushwaha, JT 2010 (11) SC 132.**

3(B). <u>Human conduct or behavior to constitute 'cruelty' u/s 13 of the Hindu Marriage Act, 1955 should be grave and weighty</u> : Human conduct or behavior to constitute 'cruelty' u/s 13 of the Hindu Marriage Act, 1955 should be grave and weighty. See : **A. Jayachandra Vs. Aneel Kaur, AIR 2005 SC 534 (Three-Judge Bench)**

3(C).<u>Human conduct or behavior relevant for purposes of deciding 'cruelty'</u> : The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status. The facts and circumstances are to be assessed emerging from the evidence on record and thereafter a fair inference has to be drawn whether the petitioner in the divorce petition (u/s 13 of the Hindu Marriage Act, 1955) has been subjected to mental cruelty due to the conduct of

the other. **See : Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.**

3(D). <u>False complaint, criminal proceedings, indecent & defamatory statements made in complaint, pursuing criminal proceedings to higher forums in appeal & revision amount to mental cruelty warranting grant of divorce</u> : False complaint, criminal proceedings, indecent & defamatory statements made in complaint, pursuing criminal proceedings to higher forums in appeal & revision amount to mental cruelty warranting grant of divorce**. See : K. Srinivas Rao Vs. D.A. Deepa, AIR 2013 SC 2176.**

3(E). <u>Demand/torture of wife for dowry sufficient reason for separate living</u> : In the cases noted below, it has been held by the Hon'ble Supreme Court and also by the Hon'ble Allahabad High Court that if the wife is tortured by her husband for demand of dowry or she has a reasonable apprehension arising from the conduct of the husband that she is likely to be physically harmed due to persistent demands of dowry by her husband, parents or relations, such an apprehension also would be manifestly a reasonable justification for the wife's refusal to live with her husband. See :

(i) Sirajmohammedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan, AIR 1981 SC 1972
(ii) Smt. Savitri Pandey Vs. Judge family court Allahabad, 2004 Cr LJ 3934 (All)
(iii) Smt. Mithlesh Kumari Vs. Bindhwasani, 1990 Cr LJ 830 (All)(LB)

3(F). <u>Impotency of husband ground for wife for separate living</u> : A wife refusing to live with her husband on the ground of his impotency is a just cause and she is entitled to maintenance u/s 125 CrPC. See : **Sirajmohammedkhan Janmohamadkhan Vs. Hafizunnisa Yasinkhan, AIR 1981 SC 1972.**

4(A). <u>'Wife' in Section 125 CrPC and under Hindu Adoptions & Maintenance Act, 1956 means only legally married wife</u> : 'Wife' in Section 125 CrPC and under Hindu Adoptions & Maintenance Act, 1956 means only legally married wife. Scope of Section 125 CrPC cannot be enlarged by introducing any artificial definition to include a woman not lawfully married in the expression 'wife'. Woman not legally married is not entitled to maintenance u/s 125 CrPC. See : **Savitaben Vs. State of Gujarat, (2005) 3 SCC 636.**

4(B).<u>Live-in-relationship & presumption of marriage u/s 114 Evidence Act</u> : Live-in-relationship between parties if continued for a long time, cannot be termed in

as “walk in & walk out” .There is a presumption of marriage between them. See : **Madan Mohan Singh Vs. Rajanikant, AIR 2010 SC 2933.**

4(C-1). **<u>Live-in relationships & its preconditions to be treated as marriage</u>** : Merely spending weekends together or a one night stand would not make it a ‘domestic relationship’ u/s 2(f) of the Protection of Women from Domestic Violence Act,2005.All live-in relationships will not amount to marriage. Live-in relationships in the nature of marriage under 2005 Act must fulfill the following conditions –

(a) the couple must hold themselves out to society as being akin to spouses.

(b) they must be of legal age to marry

(c) they must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. See : **D. Velusamy v. D. Patchaiammal, AIR 2011 SC 479.**

4(C-2). **<u>Live-in relationship when does not amount to marriage</u>** : Merely spending weekends together or a one night stand would not make it a ‘domestic relationship’ u/s 2(f) of the Protection of Women from Domestic Violence Act,2005.All live-in relationships will not amount to in the nature of marriage. Live-in relationships in the nature of marriage under the 2005 Act must fulfill the following conditions –

(a) the couple must hold themselves out to society as being akin to spouses.

(b) they must be of legal age to marry

(c) the must be otherwise to qualified to enter into a legal marriage, including being unmarried.

(d) they must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. See : **D. Velusamy v. D. Patchaiammal, AIR 2011 SC 479.**

4(D). **<u>Presumption in favour of marriage</u> :** Referring to Sections 50 & 114 of the Evidence Act, it has been held by the Hon'ble Supreme Court that the law presumes in favour of marriage and against concubinage when a man & woman

have cohabited continuously for a number of years. But this presumption is rebuttable and if there are circumstances which weaken or destroy that presumption, the court cannot ignore them. See : **Shobha Hymavathi Devi Vs. Setti Gangadhara Swamy, (2005) 2 SCC 244 (Three-Judge Bench).**

4(E). **Standard of proof beyond reasonable doubt not required in matrimonial disputes:** The concept of proof beyond the shadow of doubt is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence. Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial matters. See : **Smt. Mayadeve Vs. Jagdish Prasad, AIR 2007 SC 1426.**

4(F). **Standard of proof of marriage :** In the case of **Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit, AIR 1999 SC 3348,** it has been held by the Hon'ble Supreme Court that the validity of the marriage for the purpose of summary proceeding u/s 125 Cr PC is to be determined on he basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceeding is not as strict as is required in a trial of offence 494 of the IPC. If the claimant in proceedings u/s 125 of the code succeeds in showing that she and the respondent have lived together as husband and wife. The court can presume that they are legally wedded spouses, and in such a situation the party who denies the marital status can rebut the presumption. One it is admitted that the marriage procedure was followed then it is no necessary to further probe in to whether the said procedure was complete as per the Hindu rites in the proceedings u/s 125 Cr PC from the evidence which is led if the magistrate is prima facie satisfied with regard to the performance of marriage in proceedings u/s 125Cr PC which are of summary nature, strict proof of performance of essential rites is not required.

After not disputing the paternity of the child born few days after marriage and after accepting the fact that marriage ceremony was performed, though not legally perfect as contended, it would hardly lie in the mouth of the husband to contend in proceeding u/s 125 Cr PC that there was no valid marriage as essential rites were not performed at the time of said marriage. The provision u/s 125 Cr PC is not to be utilized for defeating the rights conferred by the Legislature to the destitute women, children or parents who are victims of social environment. Moreover order passed u/s 125 Cr PC does not finally determine the rights and liabilities of parties and parties can file civil suit to have their status determined. Also see : **Savitaben Vs. State of Gujarat, (2005) 3 SCC 636** *(para 13)*

4(G). **Standard of proof of marriage :** In the case of **Sumitra Devi Vs. Bhikan Choudhary, 1985 Cr LJ 528 (SC)** for maintenance u/s 125 Cr PC, it has been held by the Hon'ble Supreme Court that in order that there may be a valid marriage according to Hindu law, certain religious rites have to be performed. Invoking the fire and performing Saptapadi around the sacred fire have been considered by the Supreme Court to be two of the basic requirements for a traditional marriage. It is equally true that there can be a marriage acceptable in law according to customs which do not insist on performance of such rites as referred to above and marriages of this type give rise to legal relationship which law accepts.

4(H). **Standard of proof of marriage :** In the cases of **Amit Agarwal Vs. State of UP, 2007 (1) ALJ 277 (All) and Bhirari Singh Vs. State of UP, 1990 Cr LJ 844 (All),** it has been held by the Hon'ble Allahabad High Court that Sec. 125 Cr PC proceeds on the basis of de facto marriage and not on marriage de jure because the foundation for payment of maintenance u/s 125 Cr PC is the existence of conjugal relationship. Interpretation of laws which are enacted as measures of social welfare has to be made in a manner so as to give effect to their enforcement irrespective of minor crucial obstacles. Sec. 125 Cr PC is a social welfare legislation meant for benefit of destitute women and the operation of the same should not be allowed to be obstructed or hindered because of pleas about marriage being void, voidable or irregular.

4(I). **Standard of proof required in matrimonial disputes :** In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. Family members and sometimes the relatives, friends and neighbors are the most natural witnesses. Veracity of their testimony is to be tested on objective parameters and not to be thrown overboard on ground that witnesses are related to either spouse. See **: Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.**

4(J). **Magistrate may insist for affidavit before passing ex-party order for grant of interim maintenance u/s 125 CrPC :**The Magistrate may insist upon an affidavit being filed by or on behalf of the applicant concerned stating the groundsin support of the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. If a Civil Court can pass such interim orders on affidavits, there is no reason why a magistrate should not rely on them for the purpose of issuing directions regarding payment of interim maintenance. See : **Savitri Vs. Govind Singh, AIR 1986 SC 984.**

4(K). **Ex-parte order u/s 125 CrPC to be set aside where husband was not served :** Ex-parte order u/s 125 CrPC to be set aside where husband was not served. See : **Mohd. Naim Siddiqui Vs. Sultana Khatoon, 1983 SCC (Criminal) 103.**

5(A). **Burden of proof lies on husband that he did not neglect or refuse to maintain his wife or children :** Discharge of obligation that husband has no means and did not neglect or refuse to maintain lies on husband. See **: Rajathi Vs. C. Ganesan, AIR 1999 SC 2374.**

5(B).Family members, relatives, friends and neighbors are the most natural witnesses in matrimonial disputes : In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. Family members and sometimes the relatives, friends and neighbors are the most natural witnesses. Veracity of their testimony is to be tested on objective parameters and not to be thrown overboard on ground that witnesses are related to either spouse. See **: Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.**

6(A-1). **Woman not lawfully married not to be treated as 'wife' and not entitled to maintenance u/s 125 Cr PC :** In the case of **Savitaben Somabhai Bhatiya Vs. State of Gujarat, 2005 Cr LJ 2141 (SC),** it has been held that the legislature considered it necessary to include within the scope of Sec. 125 an illegitimate

child but it has not done so with respect to woman not lawfully married. As such, however, desirable it may be to take note of the plight of the unfortunate woman, who unwittingly entered into wedlock with a married man the legislative intent being clearly reflected in Sec. 125 of the Cr PC, there is no scope for enlarging its scope by introducing any artificial definition to include woman not lawfully married in the expression 'wife'. This may be an inadequacy in law, which only the legislature can undo. Even if it is true that husband was treating the woman as his wife it is really inconsequential. It is the intention of the legislature which is relevant and not the attitude of the party. The principle of estoppels cannot be pressed into service to defeat the provision of Sec. 125 of the Cr PC.

6(A-2).<u>Rape victim's illegitimate child entitled to compensation u/s 357A CrPC</u> : Word 'victim' occurring in Section 357-A CrPC and UP Victim Compensation Scheme, 2014 should include a child also born out of illegal act of sexual abuse with minor and such child of the rape victim is also entitled to compensation. See : **"A" through her father "F" Vs. State of UP, AIR 2016 (NOC) 396 (All)(DB)(LB).**

6(B-1).<u>Second wife entitled to maintenance u/s 125 CrPC if the husband had concealed from her the subsistence of his first marriage</u> : Where the husband had duped the second wife by not revealing to her the fact of his earlier marriage, it has been held by the Supreme Court that the husband cannot deny maintenance to his second wife u/s 125 CrPC in such a case and he cannot be permitted to take advantage of his own wrong by raising the contention that such second marriage during the subsistence of his first marriage, being void under the Hindu Marriage Act, 1955, the second wife was not entitled to maintenance as she was not his legally wedded wife. The earlier judgments of the Supreme Court reported in **(i) Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav, (1988) 1 SCC 530 and (ii) Savitaben Somabhai Bhatiya Vs. State of Gujarat, (2005) 3 SCC 636** supporting the said contention of the husband would apply only in those circumstances where a woman marries a man with full knowledge of subsistence of his first marriage. Second wife thus having no knowledge of first subsisting marriage is to be treated as legally wedded wife for purposes of claiming

maintenance. See : **Badshah Vs. Urmila Badshah Godse and Another, (2014) 1 SCC 188.**

6(B-2). <u>Second wife when not entitled to maintenance</u> : Second wife marrying Hindu male having legally wedded wife, after coming into force of the Hindu Marriage Act, 1955 is *void ipso jure* u/s 5(i) of the Act and is not entitled to claim of maintenance either under the Hindu Marriage Act, 1955 or u/s 125 of the CrPC. See : **Mangala Bhivaji Lad Vs. Dhondiba Rambhau Aher, AIR 2010 Bombay 122.**

6(C). <u>Woman not lawfully married not entitled to maintenance u/s 125 CrPC</u> : Where marriage is *void ab initio*, Section 125 CrPC does not apply to a de facto wife. An woman not lawfully married, is not entitled to maintenance u/s 125 CrPC. The marriage of a woman in accordance with the Hindu rites with a man having a spouse is complete nullity in the eye of law and she is not entitled to the benefit of Section 125 CrPC. See : **Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav, (1988) 1 SCC 530= AIR 1988 SC 644**

6(D).<u>Second wife when not entitled to maintenance ?</u>: Second wife marrying Hindu male having legally wedded wife, after coming into force of the Hindu Marriage Act, 1955 is *void ipso jure* u/s 5(i) of the Act and is not entitled to claim of maintenance either under the Hindu Marriage Act, 1955 or u/s 125 of the CrPC. See :

(i) **Badshah Vs. Urmila Badshah Godse and Another, (2014) 1 SCC 188.**

(ii) **Smt. Kiran Dhar Vs. Alok Berman, 2014 (84) ACC 807 (All).**

6(E). <u>Wife not entitled to maintenance u/s 125Cr PC when living separately by mutual consent</u> : When (Muslim) wife is living separately from her husband by mutual consent (compromise), she is not entitled to maintenance from her husband u/s 125 Cr PC. But if her case is that she was not living separately by mutual consent, proof for separate living by mutual consent is not necessary. See : **Bai Tahira Vs. Ali Hussaid Fissalli Chothia, 1979 SC 362(Three-Judge Bench) :** *Case of divorced Muslim woman.*

6(F). <u>Second wife when entitled to maintenance u/s 125 CrPC ?</u> : Word 'wife' includes divorced wife. However, if second wife has not even been married she could not be divorced and second wife cannot claim to be wife of her husband unless it is established that husband was not earlier married to another woman.

Divorced woman continues to enjoy status of 'wife' for claiming maintenance u/s 125 CrPC. See :

(i) D. Velusamy vs. D.Patchaiammal, AIR 2011 SC 479.

(ii) Rohtash Singh Vs. Smt. Ramendri, AIR 2000 SC 952

(iii) Bai Tahira Vs. Ali Hussaid Fissalli Chothia, AIR 1979 SC 362 (Three-Judge Bench)---*Case of divorced Muslim woman*

6(G). <u>Second marriage or re-marriage by husband when not proved</u> ?: Where the wife had alleged that her husband had contracted a second marriage and filed a complaint against her husband for an offence u/s 494 IPC, the dismissal of complaint and acquittal of husband u/s 494 IPC cannot be taken against the wife to be a just ground for her refusal to live with her husband. The court must not loose the fact how it would be difficult for the wife to prove the second marriage. To prove the second marriage as fact essential ceremonies constituting it must be proved and if second marriage is not proved to have been validly performed by observing essential ceremonies and customs in the community conviction u/s 494 IPC ought not to be made. Even though wife was unable to prove that husband has remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. Proviso to sub-sec. (3) would squarely apply and justify refusal of the wife to live with her husband. Statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise. See : **Rajathi Vs. C. Ganesan, AIR 1999 SC 2374**

6(H). <u>Allegations of second marriage by husband how to be proved</u> ?: Where it was alleged by wife u/s 125 CrPC that husband was married to one 'L' but no notice was issued to 'L' nor she was made party to proceedings, it has been held that any declaration about the marital status of 'L' vis-a-vis husband is wholly null and void as it will be violative of rules of natural justice. See : **D.Velusamy v. D. Patchaiammal, AIR 2011 SC 479.**

6(I). <u>First wife living separately entitled to maintenance u/s 125 CrPC when husband had married another wife</u> : A wife staying separately due to second marriage of her husband and when the husband's appeal against conviction for

offence of bigamy is pending is entitled to maintenance u/s 125 CrPC. It cannot be said that the wife was staying separately without any justifiable reason. See : **Smt. Munnibai Vs. Banwari Lal, AIR 2016 SC 2224.**

7. **Divorced woman continues to enjoy status of 'wife' u/s 125 CrPC :** A divorced woman continues to enjoy status of 'wife' for claiming maintenance till her remarriage or her inability to maintain herself even if the divorce was obtained by mutual consent. See : **Rohtash Singh Vs. Smt. Ramendri, AIR 2000 SC 952.**

8. **Irretrievable breakdown of marriage & divorce :** When the break down of marriage is irretrievable then divorce should not be withheld. See : **Poornima Mishra Vs. Sunil Mishra, 2010(3) ALJ 555**.

9. **Bigamous child entitled to maintenance:** Even though bigamous marriage is illegal u/s 11 of the Hindu Marriage Act, 1955 but when after such marriage Hindu male and female are living together for a number of years as husband and wife, the child born as a result of such union acquires legitimate status u/s 16(1) of the above Act and such child is entitled to maintenance u/s 125 Cr PC. See : **Bakulabai Vs. Gangaram, (1988) SCC 537.**

10(A). **Relevant considerations for grant of permanent alimony under family and personal laws (under Hindu Marriage Act, 1955) :** Permanent alimony is to be granted taking into consideration the social status, the conduct of the parties, the way of living of the spouse and such other ancillary aspects. Where the wife was already paid certain amount of alimony pursuant to interim orders of the court, it has been held that the amount of alimony paid to the wife under interim orders of the court should be ignored since the wife was bound to spend said amount for maintaining herself. The Supreme Court awarded Rs. 50 lacs as permanent alimony to be paid to the wife. See : **Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.**

10(B). **Earning wife entitled to maintenance from her husband u/s 125 CrPC :** Where the husband had placed material to show that the wife was earning some income, it has been held by the Hon'ble Supreme Court that it is not sufficient to rule out the application of Sec. 125 CrPC. It has to be established that with the amount she earned, the wife was able to maintain herself. Whether the deserted

wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient, she can claim maintenance u/s 125 CrPC. The test is whether the wife is in a position to maintain her in the way she was used to in the place of her husband. The factual conclusions of the court that the wife is unable to maintain herself cannot be interfered with in the absence of perversity. See : **Chaturbhuj Vs. Sita Bai, AIR 2008 SC 530**

10(C).<u>Earning wife & its effect</u> : Merely because wife was earning something, it would not be a ground to reject her claim for maintenance u/s 125 CrPC. See : **Sunita Kachwaha Vs. Anil Kachwaha, AIR 2015 SC 554.**

11(A).<u>Upper limit of amount of maintenance u/s 125 CrPC</u> : (A) After the amendment to section 125 CrPC which is a Central Act, by the Code of Criminal Procedure (Amendment) Act, 2001 which deleted the words "not exceeding five hundred rupees in the whole", all State amendments to section 125 CrPC by which a ceiling has been fixed to the amount of maintenance to be awarded to the wife have become invalid. See : **Manoj Yadav vs. Pushpa, AIR 2011 SC 847.**

11(B). <u>Upper limit of amount of maintenance u/s 125 CrPC in the State of U.P</u> : After the amendment to section 125 CrPC which is a Central Act, by the Code of Criminal Procedure (Amendment) Act, 2001 which deleted the words "not exceeding five hundred rupees in the whole", all State amendments to section 125 CrPC by which a ceiling has been fixed to the amount of maintenance to be awarded to the wife have become invalid. See : **Manoj Yadav vs. Pushpa, AIR 2011 SC 847.**

11(C). <u>Enhancement of maintenance (Section 127 CrPC)</u>: Due to passage of time, high inflation and rising prices, maintenance must be enhanced**.** See **: Bharat Singh Vs. State of UP, 2011 (97) AIC 360 (All).**

12(A). <u>Interim maintenance u/s 125 CrPC (Second proviso to Section 125 (1) Cr PC)</u> : (A) In appropriate cases, magistrate may even pass interim order of maintenance ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. The magistrate may however insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of

the claim for interim maintenance to satisfy himself that there is a prima facie case for making such an order. See : **Savitri Vs. Govind Singh Rawat, (1985) 4 SCC 337**

12(B). **Ex parte order of interim maintenance u/s 125 Cr PC** : In appropriate cases, magistrate may even pass interim order of maintenance ex parte pending service of notice of the application subject to any modification or even an order of cancellation that may be passed after the respondent is heard. The magistrate may however insist upon an affidavit being filed by or on behalf of the applicant concerned stating the grounds in support of the claim for interim maintenance to satisfy him self that there is a prima facie case for making such an order. See : **Savitri Vs. Govind Singh Rawat, (1985) 4 SCC 337.**

13(A). **Minor daughter entitled to interim maintenance u/s 125 Cr PC :** Where the minor daughter attained majority during the pendency of application u/s 125 Cr PC, it has been held that she would be entitled to get interim maintenance up to the date of attaining majority. See : **Shahbuddin Vs. State of UP, 2006(1) ALJ 372(All)**

13(B). **A major unmarried girl is entitled to maintenance from her parents :** Section 125 CrPC though does not fix liability on parents to maintain children beyond attainment of majority but a combined reading of Section 20(3) of the Hindu Adoptions And Maintenance Act, 1956 and Section 125 CrPC entitles an unmarried major daughter to maintenance from her parents. See :

(i) Jagdish Jugtawat Vs. Manjulata, 2002 SCC (criminal) 1147(SC)
(ii) Noor Saba Khatoon Vs. Mohd. Quasim, (1997) 6 SCC 233.
(iii) Raj Kumari Awasthi Vs. State of UP, 2008 (61) ACC 272 (All)
(iv) Lekhraj Mathil Vs. State of UP, 2016 (94) ACC 657(All).

13(C). **Major unmarried daughter not entitled to maintenance u/s 125 CrPC :** A major unmarried daughter is not entitled to maintenance u/s 125 CrPC. See : **Smt. Usha vs. Mahendra Pal Singh, 2011 Cr LJ (NOC) 165 (All)**

14(A). **Reasons must in granting maintenance u/s 125 CrPC from date of application :** Order of Magistrate granting maintenance u/s 125 CrPC from date of application without recording reasons is liable to set aside. See :

(i) Shail Kumari Devi Vs. Krishan Bhagwan Pathak, AIR 2008 SC 3006

(ii) Amit Kumar Das Vs. Basanti Das 2011 CrLJ 1187 (Calcutta)

14(B). <u>Power of Magistrate to grant maintenance u/s 125 CrPC from date of application</u> : Maintenance u/s 125 CrPC can be granted from the date of application if the court thinks fit and proper and it is with in the power of the court to grant such maintenance and in such circumstances the court is required to record reasons in support of such order. See :

(i) Shail Kumari Devi vs. Krishan Bhagwan Pathak, AIR 2008 SC 3006

(ii) Saygo Bai vs. Chueeru Bajrangi 2011 CrLJ 1007 (SC)

(iii) Amit Kumar Das vs. Basanti Das 2011 CrLJ 1187 (Calcutta)

14(C). <u>Court should record reasons whether maintenance u/s 125 CrPC would be payble from date of order or from date of application</u> ? : Provision of Section 125(2) CrPC expressly enables the Court to grant maintenance from the date of the order or from the date of the application. However, Section 125 of the CrPC must be construed with sub-Section (6) of Section 354 of the CrPC. Thus, every final order under Section 125 of the CrPC and other Section 354 must contain points for determination, the decision thereon and the reasons for such decision. In other words, Section 125 and Section 354(6) must be read together. Section 125 of the CrPC, therefore, impliedly requires the Court to consider making the order for maintenance effective from either of the two dates, having regard to the relevant facts. For good reason, evident from its order, the Court may choose either date. It is neither appropriate nor desirable that a Court simply states that maintenance should be paid from either the date of the order or the date of the application in matters of maintenance. Thus, as per Section 354(6) of the CrPC, the Court should record reasons in support of the order passed by it, in both eventualities. The purpose of the provision is to prevent vagrancy and destitution in society and the Court must apply its mind to the options having regard to the facts of the particular case. See : **Jaiminiben Hirenbhai Vyas & Another Vs. Hirenbhai Rameshchandra Vyas & another, AIR 2015 SC 300** *(Paras 6 & 7).*

14(D). <u>Magistrate has discretionary powers to grant maintenance u/s 125 CrPC from the date of application or from the date of order</u> : Magistrate has discretionary powers to grant maintenance u/s 125 CrPC from the date of application or from the date of order. See :

(i) **Sudha Devi Vs. State of UP, 2015 (1) Crimes 510 (All)**

(ii) **Lal Singh Vs. State of UP, 2014 (2) Crimes 34 (All).**

14(E). <u>Interim Maintenance u/s 125 Cr PC whether from date of order or from date of application?</u> : Magistrate can provide u/s 125 Cr PC for interim maintenance with effect from date of order or from date of application. Sec. 125 Cr PC does not require magistrate to give separate reasons if he allows interim maintenance from the date of application. It is not mandatory for the magistrate to give reasons while granting maintenance from the date of applications, although, it is proper to do so. Non-assigning the reasons does not vitiate the order of Magistrate. It is the discretion of magistrate u/s 125 (2) Cr PC to grant maintenance from the date of order or from the date of application. See :

(i) Shahbuddin Vs. State of UP, 2006(1) ALJ 372(All)

(ii) Jagat Narain Vs. Sessions Judge, Mainpuri, 1998 (1) A Cr R 315 (All-DB)

(iii) **Paras Nath Kurmi Vs. Sessions Judge, Mau, UP Nirnay Partrika 299(All)**

(iv) Satish Chandra Gupta Vs. Anita, 1994 A Cr R 631 (All)

14(F). <u>Reasons granting maintenance from date of applications not necessary</u> : Magistrate can provide u/s 125 Cr PC for interim maintenance with effect from date of order or from date of application. Sec. 125 Cr PC does not require magistrate to give separate reasons if he allows interim maintenance from the date of application. It is not mandatory for the magistrate to give reasons while granting maintenance fro the date of applications, although, it is proper to do so. Non assigning the reasons does not vitiate the order of Magistrate. It is the discretion of magistrate u/s 125 (2) Cr PC to grant maintenance from the date of order or from the date of application. See :

(i) Shahbuddin Vs. State of UP, 2006(1) ALJ 372(All)

(ii) Jagat Narain Vs. Sessions Judge, Mainpuri, 1998 (1) A Cr R 315 (All-DB)

(iii) Paras Nath Kurmi Vs. Sessions Judge, Mau, UP Nirnay Partrika 299(All)

(iv) Satish Chandra Gupta Vs. Anita, 1994 A Cr R 631 (All)

15. <u>Personal law of parties relevant for claim of maintenance u/s 125 Cr PC</u> : The question of entitlement of maintenance u/s 125 Cr PC cannot but be decided by reference to personal law of the parties. See : **Savitaben Somabhai Bhatiya Vs. State of Gujarat, 2005 Cr LJ 2141 (SC)**

16. **Different Quantum of maintenance fixed by different States by way of State amendments held to be unconstitutional** : Observing that different amounts of maintenance awardable u/s 125 CrPC have been fixed by different states by state amendments, the Supreme Court declared that prima facie these amendments are unconstitutional being violative of Articles 14 and 21 of the Constitution and issued notices to the States concerned as well as Union of India. See : **Manoj Yadav v. Pushpa, (2010) 15 SCC 289.**

17. **Enhancement of amount of maintenance permissible u/s 127 Cr PC :** In the case of **Savitaben Somabhai Bhatiya Vs. State of Gujarat, 2005 CrLJ 2141 (SC),** it has been held by the Hon'ble Supreme Court that the request for enhancement of amount of maintenance already granted u/s 125 Cr PC cannot be refused on the technical ground that at the time of filing of the application u/s 125 Cr PC some maximum limit of maintenance was prescribed. Moreover Sec. 127 Cr PC permits increase in the quantum of maintenance.

18(A). **A divorced Muslim wife is entitled to maintenance u/s 125 CrPC so long as she does not remarry :** A divorced Muslim wife is entitled to maintenance u/s 125 CrPC so long as she does not remarry**.** See :

(i) Shabana Bano Vs. Imran Khan, (2010) 1 SCC 666.
(ii) Danial Latifi Vs. Union of India, (2001) 7 SCC 740 (Five-Judge Bench)
(iii) Iqbal Bano Vs. State of UP, (2007) 6 SCC 785.
(iv) Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No. 4377/2012, Shamim Bano Vs. Asaraf Khan.
(v) Rohtash Singh Vs. Smt. Ramendri, AIR 2000 SC 952

18(B). **Summary of law propounded by the Five-Judge Constitution Bench of the Supreme Court in the case of Danial Latifi Vs. Union of India, AIR 2001 SC 3958 :** The summary of law propounded by the Five-Judge Constitution Bench of the Supreme Court in the case of Danial Latiff Vs. Union of India, AIR 2001 SC 3958 is as under :

(1) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act (Muslim Women (Protection of Rights on Divorce) Act, 1986).

(2) Liability of Muslim husband to his divorced wife arising under Section 3(1)(a) of the Act to pay maintenance is not confined to iddat period.

(3) A divorced Muslim woman who has not remarried and who is not able to maintain herself after iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance.

(4) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.

18(C). <u>Muslim husband liable to pay maintenance to his divorced wife even after iddat period provided she has not remarried and is unable to maintain herself</u> : Muslim husband is liable to make reasonable and fare provision for future of divorced wife which includes maintenance. Liability to pay maintenance is not confined to iddat period. Divorced Muslim woman unable to maintain herself after iddat period can proceed u/s 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 against her relatives or wakf borad for maintenance. Such a scheme provided under the said Act is also equally beneficial like one provided u/s 125 CrPC. Provision under the said Act depriving Muslim women from applicability of Section 125 CrPC is not discriminatory or unconstitutional. See **: Danial Latifi Vs. Union of India, AIR 2001 SC 3958 (Five-Judge Bench).**

18(D). <u>Application for maintenance u/s 125 CrPC by a divorced Muslim wife is maintainable till she does not marry irrespective of her application u/s 5 of the Muslim Women (Protection of Right on Divorce) Act, 1986 :</u> Application for maintenance u/s 125 CrPC by a divorced Muslim wife is maintainable till she does not marry irrespective of her application u/s 5 of the Muslim Women (Protection of Right on Divorce) Act, 1986. See :

(i) Shabana Bano Vs. Imran Khan, (2010) 1 SCC 666

(ii) Danial Latifi Vs. Union of India, (2001) 7 SCC 740 (Five-Judge Bench)

(iii) Iqbal Bano Vs. State of UP, (2007) 6 SCC 785

(iv) Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No. 4377/2012, Shamim Bano Vs. Asaraf Khan.

18(E). <u>A divorced Muslim wife entitled to maintenance u/s 125 CrPC even in post-*iddat* period as long as she does not marry</u> : A divorced Muslim wife entitled to maintenance u/s 125 CrPC even in post-*iddat* period as long as she does not marry. See :

(i) Shabana Bano Vs. Imran Khan, (2010) 1 SCC 666
(ii) Danial Latifi Vs. Union of India, (2001) 7 SCC 740 (Five-Judge Bench)
(iii) Iqbal Bano Vs. State of UP, (2007) 6 SCC 785.
(iv) Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No. 4377/2012, Shamim Bano Vs. Asaraf Khan.

18(F). <u>Muslim Woman and her children entitled to maintenance u/s 125 CrPC as Section 3(1)(b) of the Muslim Women (Protection of Right on Divorce) Act, 1986 does not affect such right under Section 125 CrPC</u> : Muslim Woman and her children entitled to maintenance u/s 125 CrPC as Section 3(1)(b) of the Muslim Women (Protection of Right on Divorce) Act, 1986 does not affect such right under Section 125 CrPC. Benefit of Section 125 CrPC is available irrespective of religion and it would be unreasonable, unfair and inequitable to deny this benefit to the children only on ground of their being bourn of Muslim parents. See :

(i) **Judgment dated 16.04.2014 of the Supreme Court in SLP (Criminal) No. 4377/2012, Shamim Bano Vs. Asaraf Khan.**
(ii) **Noor Saba Khatoon Vs. Mohd. Quasim, (1997) 6 SCC 233.**

18(G). <u>Wife and children of a Muslim husband having entered irregular marriage entitled to maintenance u/s 125 CrPC</u> : The bar of unlawful conjunction (jama bain-almahramain) renders a marriage irregular (fasid) and not void (batil). Consequently, under the Hanafi law as far as Muslims in India and concerned, an irregular marriage continues to subsist till terminated in accordance with law and the wife and the children of such marriage would be entitled to maintenance under the provision of Section 125 CrPC. See : **Chand Patel Vs. Bismillah Begum, (2008) 4 SCC 774.**

19. <u>Distinction between divorce and judicial separation</u> : There is a distinction between a decree for divorce and decree or judicial separation. In the decree for divorce, there is a severance of status and the parties do

not remain as husband & wife where as in a decree of judicial separation, the relationship between husband and wife continues and the legal relationship continues as it has not been snapped. The observation of the High Court that the party having been judicially separated, the appellant wife has ceased to be an aggrieved person under the protection of Women from Domestic Violence Act, 2005, is wholly unsustainable. See : **Krishna Bhattacharjee Vs. Sarathi Choudhury, (2016) 2 SCC 705** *(paras 15 & 23).*

20(A). **<u>Appearance of lawyers before family courts</u>** : Section 13 of the Family Courts Act, 1984 reads thus : "*Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner.* ***Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae***."

20(B).**<u>No absolute prohibition for appearance of lawyers before Family Court</u> :** Section 13 of the Family Courts Act, 1984 pertinently deals with appointment of legal practitioner by the parties. Proviso to Section 13 deals with the power of the Family court to appoint a legal practitioner as amicus curiae. Section 13 only prohibits that party cannot claim to appoint legal practitioner to plead his/her cause as a matter of right but an exception is carved out in proviso vesting the jurisdiction in the Family Court to seek the assistance of a legal practitioner by appointing any Advocate as amicus curiae to assist the Court. Section 13 does not create a total embargo or prohibition on the parties before the Family Court to engage an Advocate. **See :**

(i) Rupesh Patel Vs. Ku. Siddhi Patel, AIR 2016 (NOC) 177 (Chhatisgarh)

(ii) AIR 1991 Bombay 105.

21(A).<u>Detention of only one month can be imposed by Magistrate u/s 125(3) CrPC in one go for recovery of arrear maintenance</u> : The Apex Court in the case reported in **Shahada Khatoon Vs. Amjad Ali, (1999) 5 SCC 672** has gone to the extent of saying that the confinement u/s 125 CrPC can extend to only one

month and if even after the expiry of one month the delinquent husband does not make the payment of arrears then the wife can approach the Magistrate again for a similar relief but the confinement of the husband must be only of one month. In the own words of the Apex Court "by no stretch of imagination can the Magistrate be permitted to impose sentence for more than one month." The Apex Court further lays down a fetter in the exercise of this power by the Judicial Magistrate or the Family Court Judge to the extent that only a confinement for a period of one month can be passed on an application whether the amount claimed by the wife as arrears is for more than one month or for only a month. In one stroke no composite confinement can be directed by the Court. It very clearly flows from the above decision of the Apex Court. This power can be exercised only after a warrant for recovery of the unpaid maintenance allowance is issued by the Court. This warrant is to be executed like any warrant of recovery of fine. This fine can be recovered like any land revenue arrears. Unless that exercise is first adhered to, this power of confinement to jail for his failure cannot be resorted to by any Court accordingly. See : **Dalip Kumar Vs. Family Court, Gorakhpur, 2000 CrLJ 3893 (All).**

21(B). **Issuing warrant of recovery u/s 125 (3) CrPC without deciding objections of husband improper :** Issuance of recovery warrant against husband without firstly deciding his objection u/s 125 CrPC is improper. It is duty of the court to first decide objection filed by the husband. See : **Dilshad Haji Risal Vs. State of UP, AIR 2005 All 403.**

21(C). **Liability to pay maintenance is a continuing liability and filing successive applications u/s 125(3) CrPC not required :** Liability to pay maintenance is a continuing liability and filing successive applications u/s 125(3) CrPC cannot be insisted upon. See : **Shantha Vs. B.G. Shivnanjappa, (2005) 4 SCC 468.**

21(D). **Liability of husband for payment of arrear of maintenance continues even after his detention in jail:** Interpreting the provisions of Section 125 and 128 CrPC, the Supreme Court has held that a distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other**.** Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the

liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realized that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears. Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds, no useful purpose would be served by sending the husband to jail. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. The Parliament in its wisdom has not said so. Commonsense does not support such a construction. From where does the Court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it? The order for monthly allowance can be discharged only upon the monthly allowance being recovered. The liability cannot be taken to have been discharged by sending the person liable to pay the monthly allowance to jail. At the cost of repetition, it may be stated that it is only a mode or method of recovery and not a substitute for recovery. No other view is possible. See:

(i) Subrata Roy Sahara Vs. Union of India, AIR 2014 SC 3241

(ii) Kuldip Kaur Vs. Surinder Singh, AIR 1989 SC 232.

21(E).<u>Recovery or enforcement of payment of maintenance</u> : Trial court allowed Rs. 10,000 p.m. as interim maintenance u/s 125 CrPC to wife - Sessions Court and High Court affirmed the same - Appellant husband's approximate salary was

Rs 34,900 p.m. of which Rs 21,329 was deducted towards home loan - takehome salary was about Rs 9000 p.m. - Respondent wife was able to maintain herself. The Supreme Court held that the amount awarded by way of interim maintenance is on the higher side - Having regard to the qualifications that respondent wife possesses, there is no reason why she ought not to be in a position to maintain herself in future as well - Interim maintenance order modified - Appellant shall pay a sum of Rs 5000 p.m. instead of Rs 10,000 p.m.. See : **Bhushan Kumar Meen v. Mansi Meen, (2010) 15 SCC 372.**

21(F).<u>Attachment of salary for payment of arrear of maintenance when warranted ?</u> : Where husband had not paid payment of arrear of maintenance to his wife awarded u/s 125 CrPC, the Supreme Court directed that the arrears of maintenance be paid in three installments within three months of reassessment of amount. Order of attachment of salary of husband could be reimposed in case of non-compliance with the directions for payment of maintenance. See : **Bhushan Kumar Meen v. Mansi Meen, (2010) 15 SCC 372.**

21(G).<u>Limitation to issue warrant of recovery on application for recovery of maintenance is one year from the date of order</u> : First Proviso to sub-section (3) of Section 125 CrPC reads thus : "*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*."

21(H).<u>Husband not to be released from detention till he makes the payment of maintenance</u> : Sentence of jail is no substitute for recovery of the amount of monthly allowance which has fallen in arrears. Husband shall not be released till he makes the payment. The liability cannot be taken to have been discharged by sending the person to jail. At the cost of repetition, it is only a mode or method of recovery and not a substitute for recovery. See : **Kuldip Kaur Vs. Surinder Singh, AIR 1989 SC 232.**

22(A). <u>Limitation of six months for dissolution of marriage u/s 13-B(2) of the Hindu Marriage Act, 1955 waived by the Supreme Court in exercise of its powers under Article 142 of the Constitution</u> : Family and Personal Laws Hindu Law :

Section 13-B - Litigation quashed by Supreme Court on the basis of compromise - Litigation between appellant and respondent husband pending since year 2005 - Twelve cases of criminal as well as matrimonial disputes pending as on today - Disputes finally settled between parties - Respondent husband agreed to pay a sum of Rs 2,25,00,000 to appellant as full and final settlement of all disputes with clear understanding that all litigations pending between them will terminate - Appellant satisfied with payments she received and she does not wish to pursue the matter any further - Both parties agreed that entire dispute should be settled here and now - All litigations pending between parties quashed/terminated - Court(s) which were seized of the matters would not be required to make any further orders in this respect - Application filed under S. 13-B of Hindu Marriage Act, allowed - Marriage between parties is dissolved, (2011) 15 SCC 612-A Family and Personal Laws Hindu Law S. 13-B(2) - Dissolution of marriage by mutual consent - Waiver of clause regarding limitation of six months - Litigation between appellant and respondent husband pending since year 2005 - Twelve cases of criminal as well as matrimonial disputes pending as on today - Relationship between couple had broken down in a very nasty manner - There was absolutely no possibility of a rapprochement between them even if the matter was to be adjourned for a period of six months as stipulated under S. 13-B, Hindu Marriage Act - Parties had also filed an application under S. 13-B, Hindu Marriage Act, 1955 seeking dissolution of the marriage - Petition for divorce filed by husband in year 2007 - Period of six months waived in view of compromise, and all litigations pending between parties quashed - Application filed under S. 13- B, Hindu Marriage Act allowed - Marriage between parties dissolved. See : **Priyanka Khanna v. Amit Khanna, (2011) 15 SCC 612.**

22(B). <u>Section 19 of the Family Courts Act, 1984 supersedes Section 28 of the HM Act, 1955 & limitation to file appeal against the judgment and order of the family court would be 30 days and not 90 days</u> : The limitation provided under the Family Courts Act would prevail over the one which has been provided under the Hindu Marriage Act for the simple reason that the Family courts Act is in the form of super legislation vis-a-vis the Hindu Marriage Act. Insofar as procedure for settling family/matrimonial disputes is concerned. Section 20 of Family

Courts Act in this regard specifically provided that in event of inconsistency between provisions of that Act or any other law for the time being in force, the provisions of Family Courts Act shall prevail. Accordingly where the family courts have been established and a judgment and order is passed by it, the appeal against such judgment and order would be one under Section 19 of Family Courts Act and the provision s of Section 28 of the Hindu Marriage Act insofar as it provides for filing an appeal pales into insignificance and stand superseded by Section 19 of Family Courts Act. See : **Ashutosh Kumar Vs. Anjali Srivastava, AIR 2009 All 100.**

23. **Appeal against interlocutory order of family court not maintainable :** An interlocutory order passed by family court is not appealable before the High Court u/s 19 of the Family Courts Act, 1984. See :

(i) Smt. Varsha Lakhmani Vs. Hitesh Wadhwa, 2008 (4) ALJ 446.

(ii) Soumya Vs. Johny, AIR 2015 Karnataka 110 (DB)

24(A). Maintenance under Protection of Women from Domestic Violence Act, 2005 : In view of Section 23 of the Protection of Women from Domestic Violence Act, 2005, it is well within the jurisdiction of the Magistrate to grant the interim ex-parte relief as he deems just & proper. If the Magistrate is satisfied that the application prima facie discloses that the husband is committing or has committed an act of Domestic Violence or that there is a likelihood that the husband may commit an act of domestic violence act. See **: Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori, (2014) 10 SCC 736.**

24(B). Maintenance under Protection of Women from Domestic Violence Act, 2005 is different and in addition to an order of maintenance u/s 125 CrPC or any other law : Nature of relief available to a wife u/s 12 & 20 of the Protection of Women from Domestic Violence Act, 2005 is distinct from relief u/s 125 CrPC. Monetary relief as stipulated u/s 20 of the 2005 Act is different from maintenance which can be in addition to an order of maintenance u/s 125 CrPC or any other law. Such monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and child of the aggrieved person as a result of the domestic violence which is not dependent on the question whether the aggrieved person, on the date of filing of the application u/s 12 of the 2005

Act is in a domestic relationship with the husband. See : **Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori, (2014) 10 SCC 736.**

24(C). <u>Family Court has powers to adjust the amount of maintenance already awarded by the Magistrate u/s 125 CrPC and the Domestic Violence Act, 2005</u> : Family Court has powers to adjust the amount of maintenance already awarded by the Magistrate u/s 125 CrPC and the Domestic Violence Act, 2005. See : **Vikas Vs. State of UP, (2014) DMC 373 (All).**

24(D). <u>Relief available to wife u/s 18, 19, 20, 21 & 22 of the DVA Act, 2005 can also be sought from civil court and Family Court</u> : It is not necessary that relief available under Sections 18, 19, 20, 21 & 22 of the DVA Act can only be sought for in a proceeding under the Domestic Violence Act. Any relief available under the aforesaid provisions may also be sought for in any legal proceeding even before a civil court and Family Court, apart from the criminal court, affecting the aggrieved person whether such proceeding was initiated before or after the commencement of the DVA Act. This is apparent from Section 26 of the DVA Act. Even before the criminal court where case under Section 498-A IPC is pending, if the allegation is found genuine, it is always open to the appellant to ask for reliefs under Sections 18 to 22 of the DVA Act and interim relief under Section 23 of the DVA Act**.** See :

(i) **Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori, (2014) 10 SCC 736.**

(ii) V.D. Bhanot Vs. Savita Bhanot, (2012) 3 SCC 183

25(A). <u>Section 125 CrPC & Section 18 of Hindu Adoptions And Maintenance Act, 1956 compared</u> : There is no inconsistency between Section 125 CrPC & Section 18 of the Hindu Adoptions And Maintenance Act, 1956. The scope of the two laws is different. See : **Savitaben Vs. State of Gujarat, (2005) 3 SCC 636.**

25(B). <u>Maintenance already granted by Family Court u/s 24 of the Family Court Act, 1984 to supersede maintenance granted u/s 125 CrPC</u> : Maintenance already granted by Family Court u/s 24 of the Family Court Act, 1984 would supersede the maintenance granted earlier u/s 125 CrPC. **See : Sanjay Kumar Sinha Vs. Asha Kumari & Others (2018) 5 SCC 333.**

25(C). <u>An order of maintenance u/s 125 CrPC does not disentitle the wife to claim maintenance under the Hindu Adoptions And Maintenance Act, 1956</u> : An

order passed u/s 125 CrPC by compromise or otherwise cannot foreclose remedy available to a wife u/s 18(2) of the Hindu Adoptions And Maintenance Act, 1956. Order passed u/s 125 CrPC would not preclude wife from making claim u/s 18 of the 1956 Act**. See : Nagendrappa Natikar Vs. Neelamma, AIR 2013 SC 1541**.

26(A). **Jurisdiction of Family Courts** : Family Court has exclusive jurisdiction over all matters enumerated u/s 7 and 8 of the Family Courts Act, 1984.

26(B). **Suit for declaration of matrimonial status maintainable before Family Court alone and not before Civil Court :** A suit for declaration regarding matrimonial status of a person as to be filed only before Family Court and not before Civil Court, be it affirmative declaration or negative declaration. It is wrong to say that negative declaration is not within the jurisdiction of the Family Court. See : **Balram Yadav Vs. Phulmaniya Yadav, AIR 2016 SC 2161.**

26(C). **Family Courts Act, 1984 does not bar remedies before other courts under other laws** : There are certain rights which are independent and their pendency under any other Act outside the jurisdiction of Family courts is maintainable and is not barred. There is no bar against the parties from approaching other courts outside the jurisdiction of Family Court. See : **P. Jayalakshmi Vs. Ravichandran, AIR 1992 AP 190.**

27(A). **Procedure of Family Courts (Section 10) :** Section 10 of the Family Courts Act, 1984 provides for application of the CPC and other procedural laws to the Family Courts but not to the proceedings u/s 125 to 128 CrPC**.** Procedure of the CrPC applies to the cases u/s 125 to 128 CrPC. Section 10(3) of the Family Courts Act, 1984 empowers the Family Court to adopt its own procedure with a view to arrive at a settlement in between the parties.

27(B). **Family Court should adopt its own procedure and the provisions of CPC are not applicable to it :** Provisions of CPC are not applicable to the Family Court. Family Court should adopt its own procedure u/s 7 of the Family Court Act, 1984 for imparting justice. Specific remedy to recall witness is available under Order 18, rule 17 CPC. Court cannot recall witness for further cross examination and submitting true copy of CD in exercise of its inherent power u/s 151 CPC. **See: Doctor Tripat Deep Singh Vs. Doctor (Smt.) Paviter Kaur, AIR 2019 (NOC) 221 (Punjab & Haryana).**

28(A). **Enforcement of maintenance orders passed by courts in India in foreign countries (Maintenance Orders Enforcement Act, 1921) :** Section 5 of the Maintenance Orders Enforcement Act, 1921 reads thus : "*Transmission of maintenance orders made in India : Where a Court in (India) has, whether before or after the commencement of this Act, made a maintenance order against any person, and it is proved to that Court that the person against whom the order was made is resident in a reciprocating territory, the court shall send to the Central Government, for transmission to the proper authority of that territory, a certified copy of the order.*"

28(B). **Section 125 CrPC can be applied to foreigner as well :** A wife can maintain an application in India as the provision of Section 125 CrPC do not exclude a foreigner from its purview and are applicable to all the persons irrespective of their citizenship and personal law of the husband. See : **Sarishta Devi Vs. Kesho Dass Sharma, 1991 (2) Crimes 865 (P&H).**

28(C). **Judgment of a foreign court in matrimonial disputes relevant in India u/s 13 CPC :** Judgment of a foreign court in matrimonial disputes is relevant in India u/s 13 CPC. See **:**

(i) **Ruchi Majoo Vs. Sanjeev Majoo, (2011) 6 SCC 479.**

(ii) **Satya Vs. Teja Singh, AIR 1975 SC 105.**

29. **Application u/s 125 CrPC dismissed in default can be restored:** Proceedings for maintenance u/s 125 CrPC are quasi civil in nature. Order dismissing maintenance application can be recalled in exercise of inherent powers of criminal court. See : **Sau Mandakini B. Pagire Vs. Bhausaheb Genu Pagire, 2009 (2) ALJ (NOC) 255 (Bombay).**

30(A). **Reference of matrimonial disputes to mediation centre mandatory :** When a matrimonial dispute is taken up by the family court or by the court of first instance for hearing, it must be referred to mediation centers. Section 9 of the Family Courts Act enjoins upon the family court to make efforts to settle the matrimonial dispute and in these efforts, family courts are assisted by counselors. Even if the counselors fail in their efforts, the Family Courts should direct the parties to mediation centers where trained mediators are appointed to mediate

between the parties. Being trained in the skill of mediation they produce good results. See **:**

(i) K. Srinivas Rao Vs. D.A. Deepa, AIR 2013 SC 2176 *(Paras 31 & 32)*

(ii) Bhavana Ramaprasad Vs. Yadunandan Parthasarthy, AIR 2015 Karnataka 6.

30 (B). <u>ADR Rules framed u/s 89 CPC also to apply the Family Courts</u>: With a view to enable the Court to refer the parties to conciliation/mediation, where parties are unable to reach a consensus on an agreed name, there should be a panel of well trained conciliation/mediation to which it may be possible for the Court to make a reference. It would be necessary for the High Courts and the District Courts to take appropriate steps in the direction of preparing the requisite panels. A doubt was expressed about the applicability of ADR rules for dispute arising under the Family Courts Act since that Act also contemplates rules to be made. It is, however, to be borne in mind that the Family Courts Act applies the CPC for all proceedings before it. In this view, ADR rules made under the CPC can be applied to supplement the rules made under the Family Courts Act and provide for ADR in so far as conciliation/mediation is concerned. See: Salem Advocate Bar Association, Tamilnadu Vs. Union of India, AIR 2005 SC 3353 (Three-Judge Bench) (paras 63 & 64)

30(C).<u>Duty of Family Court is to first make efforts for conciliation between the parties</u> : According to Section 9 of the Family Courts Act, 1984, overall duty cast on the Family Court is to endeavour first for conciliation and settlement between the parties. See : **Raj Kishore Mishra Vs. Meena Mishra, AIR 1995 All 70.**

30(D). <u>Family Court alone and not civil court is competent to decide matrimonial status or disputes</u> : In view of Section 7 of the Family Courts Act, 1984, Family Court alone can decide the matrimonial status of a party since only Family Court is conferred with the jurisdiction to decide such issues. Civil Court is not competent forum. See :

(i) Balram Vs. Fulamaniya Yadav, AIR 2016 SC 2161

(ii) Dwipen Saikia Vs. Smt. Jitumoni Saikia, AIR 2015 Guahati 134.

30(E).<u>Addl. District & Sessions Judges of Fast Track Courts of 72 Districts of Uttar Pradesh conferred with the powers of the Family Courts</u> : The Governor of Uttar Pradesh vide Notification dated 25.02.2016 issued in exercise of powers

under clause (b) of sub-section (1) of Section 3 & 4 of the Family Courts Act, 1984 read with the judgment dated 13.01.2016 of the Allahabad High Court passed in PIL No. 15895/2015 in Re Vs. Zila Adhivakta Sangh, Allahabad has conferred powers of the Family Courts also on the Addl. District & Sessions Judges of Fast Track Courts of 72 Districts of Uttar Pradesh**.**

31. **A rapist liable to maintain the child born as result of rape :** A child born as a result of rape is entitled to maintenance from the person who had committed the rape. See : **Baleshwar Mandal Vs. Anup Mandal, 2006 CrLJ (NOC) 273 (Jharkhand).**

32(A). Step mother not entitled to maintenance u/s 125 CrPC : Mother is one who has given birth to the child. A step mother can be a dependent but she cannot claim maintenance. See : **Kirti Kant D. Vadadoria Vs. State of Gujarat, (1996) 4 SCC 479.**

32(B).**Widow's right to maintenance from the estate of her deceased Hindu husband or from his legal heirs** : A will executed by a deceased Hindu husband could not prevail in view of Section 14(1) of the Hindu Succession Act, 1925 when the property left behind by the deceased Hindu husband was the separate property or self-acquired property of the deceased husband and his widow, though might have succeeded to the property as an absolute and sole heir if the husband had died intestate had no pre-existing right as such. **The widow had, at best, only a right to maintenance and at best could have secured a charge by the process of court for her maintenance under the Hindu Adoptions and Maintenance Act , 1956 in the separate property of her husband**. May be, in terms of Section 39 of the Transfer of Property Act, she could have also enforced the charge even as against an alienee from her husband. Unlike in a case where the widow was in possession of the property on the date of the coming into force of the Act in which she had a pre-existing right at least to maintenance, a situation covered by Section 14(1) of the Hindu Succession Act, 1925, if his separate property is disposed of by a Hindu male by way of testamentary disposition, placing a restriction on the right given to the widow, the question whether Section 14(2) would not be attracted, was not considered at all by the High Court. Under Section 18 of the Hindu Adoptions and Maintenance Act,

1956, a Hindu wife is entitled to be maintained by her husband during her lifetime, subject to her not incurring the disqualifications provided for in sub-section (3) of that Section. The widow is in the list of dependants as defined in Section 21 of the Act. The widow remains a dependant so long as she does not remarry. Under Section 22, an obligation is cast on the heirs of the deceased Hindu to maintain the dependant of the deceased out of the estate inherited by them from the deceased. Under sub-section (2), where a dependant has not obtained by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of the Act, the dependant would be entitled, but subject to the provisions of the Act, to maintenance from those who take the estate. It is seen that neither Section 18 relating to a wife nor Section 21 dealing with a widow, provides for any charge for the maintenance on the property of the husband. To the contrary, Section 27 specifies that a dependant's claim for maintenance under that Act shall not be a charge on the estate of the deceased unless one would have been created by the will of the deceased, by a decree of court, by an agreement between the dependant and the owner of the estate or otherwise. Thus a widow has no charge on the property of the husband. Section 28 provides that where a dependant had a right to receive maintenance out of an estate, that right could be enforced even against a transferee of the property if the transferee had notice of the right, or if the transfer is gratuitous, but not against a transferee for consideration without notice of the right. Section 28 is in *pari materia* with Section 39 of the Transfer of Property Act. The Kerala High Court in Kaveri Amma Vs. Parameswari Amma and Ors., AIR 1971 Kerala 216, has liberally interpreted the expression "right to receive maintenance" occurring in the section as including a right to claim enhanced maintenance against the transferee. The sum and sub-total of the right under the Hindu Adoptions and Maintenance Act, 1956 is only to claim maintenance and the right to receive it even against a transferee. In the absence of any instrument or decree providing for it, no charge for such maintenance is created in the separate properties of the husband. See : **Sadhu Singh Vs. Gurdwara Sahib Narike, AIR 2006 SC 3282.**

33(A).<u>Power of revisional court against an order passed u/s 125 CrPC</u> : (A) Finding of magistrate on disputed questions of fact recorded after full consideration of evidence should not be disturbed by revisional court in absence of any error of law. See : **Bakulabai Vs. Gangaram, (1988) SCC 537.**

33(B).<u>Revisional Court when to set aside findings of facts recorded by lower Court</u> : Where the High Court in exercise of its revisional powers had set aside the findings of facts recorded by the lower court u/s 125 of the CrPC, it has been held by the Supreme Court that, "it is well settled that the Appellate or Revisional Court while setting aside the finding recorded by the Court below must notice those findings, and if the Appellate or Revisional Court comes to the conclusion that the findings recorded by the Trial Court are untenable, record its reasons for coming to the said conclusion. Where the findings are findings of fact it must discuss the evidence on record which justifies the reversal of the findings recorded by the Court below. This is particularly so when findings recorded by the Trial Court are sought to be set aside by an Appellate or Revisional Court. One cannot take exception to a judgment merely on the ground of its brevity, but if the judgment appears to be cryptic and conclusions are reached without even referring to the evidence on record or noticing the findings of the Trial Court, the party aggrieved is entitled to ask for setting aside of such a judgment". See : **Deb Narayan Halder Vs. Anushree Halder, 2003(47)ACC 897 (SC)**

33(C).<u>Second revision against an order passed u/s 125 CrPC not maintainable</u>: Where a revision filed by the husband against order of maintenance granted to wife u/s 125 CrPC was rejected, a second revision by the husband through his minor son would not be maintainable. See : **Preetpal Singh Vs. Smt. Ishwari Devi, 1991 CrLJ 3015 (All)**

34(A). <u>Family court judge not covered within the word 'judicial officer'</u> : Judges presiding over family courts are neither members nor integral part of judicial services. The word "judicial officer" has not been defined in the Constitution of India. A family court judge cannot be considered for elevation to High Court. See : **S.D. Joshi Vs. High Court of Judicature at Bombay, 2011(1) SCJ 169=(2011) 1 SCC 252.**

Note : *The said decision of the Supreme Court has been rendered in relation to Maharashtra Family Court (Recruitment And Service Conditions) Rules, 1990.*

34(B). <u>Presiding Officer of Family Court is 'Judge'</u> : Family Court has all trappings of court. Therefore, it is Court. Presiding Officer of Family Court is 'Judge'. See : **S.D. Joshi Vs. High Court of Judicature at Bombay, (2011) 1 SCC 252.**

35(A). <u>High Court u/s 22 to 24 CPC and u/s 407 CrPC has powers to transfer cases from one family court to other family court</u> : It has been declared by Section 7 of the Act to be a district court or subordinate civil court to which provisions of the CPC and CrPC have been applied by Section 10 of the Act. It will not cease to be a court merely because some restrictions are imposed by Section 11 to 16 of the Act. Looked at from every angle Family Court and as such, High Court has powers under Sections 22 to 24 of the CPC to transfer a case relating to the matters dealt with by explanation to sub-section (I) of Section 7 of the Act and likewise has powers under Section 407 of the CrPC to transfer a case relating to Chapter IX, CrPC. See :

(i) **Mobel Treeza Pinto Vs. Francis Pinto, (2005) 7 SCC 761** *(transfer of case under Divorce Act, 1869)*

(ii) **Munna Lal Vs. State of UP, AIR 1991 All 189 (DB)**

(iii) **Smt. Jyotsna Dixit Vs. Civil Judge, Khiri, 1999 (1) AWC 107 (All).**

Note : *But the District & Sessions Judge has no power of transfer of cases from Family Court to any other Court in his judgeship.*

35(B).<u>Principal Judge of Family Court to allot cases to Addl. Judges of the Family Courts :</u> Section 4(2) of the Family Courts Act, 1984 deals with designation and powers of the Judges of the Family Courts. The Judges of the Family Courts are appointed by the State Government in consultation with the High Court of State. If more than one Judge are appointed for a family court one of them is designated as Principal Judge and the other Addl. Principal Judge. Each of them can exercise all or any of the powers conferred on the Family Court by virtue of the Act. The Principal Judge being the head of the Family Court will allot the day to day business of the Court to the Additional Principal Judge or Other Judges. Thus the Principal Judge has supervisory and administrative authority over the other judges. In the absence of the Principal Judge or in the event of any vacancy, the Addl. Principal Judge will discharge his functions by assuming the power

of the Principal Judge. See : **Smt. Sandhya Guntae Vs. Ravikanth Guntae, II (1999) DMC 97.**

35(C). **District Judge when to transfer case from Family Court ? :** In the absence of presiding officers of the Family Court, the District Judge and the Addl. District Judge can be directed by the High Court to look after urgent and daily routine work of the family courts during the absence of the presiding officer. See : **Smt. Sandhya Guntae Vs. Ravikanth Guntae, II (1999) DMC 97.**

36. **Recording of statement of witness through video conferencing permissible in a petition for divorce for mutual consent u/s 13-B of Hindu Marriage Act, 1955** : Recording of statement of witness through video conferencing is permissible in a petition for divorce for mutual consent u/s 13-B of Hindu Marriage Act, 1955. Word 'hearing' used in Section 13-B does not necessarily mean that both parties have to be examined. See : **Smt. Shilpa Chaudhary Vs. Principal Judge, AIR 2016 All 122.**

37. **POA Holder cannot enter into compromise on behalf of principal :** POA Holder cannot plead for the principal but can only plead evidence or settle pleading in the form of plaint or WS or petition. A power of attorney holder (mother of wife) cannot enter into compromise for dissolution of marriage by mutual consent u/s 13-B of the Hindu Marriage Act, 1955. See : **Smt. Shilpa Chaudhary Vs. Principal Judge, AIR 2016 Allahabad 122.**

38. **Maintenance of elderly and senior citizens** : Art.21 of the Constitution of India in its expansive meaning encompasses various rights of elderly persons/senior citizens such as right to dignity, right to health, right to adequate pension and right to shelter. There is need to continuously monitor implementation of rights of elderly persons/senior citizens. Thus a continuing mandamus is required to be issued in the present case as it is a well-recognised practice for enforcing the social justice postulated by the Preamble. The Supreme Court issued directions for enforcement of the said rights and the statutory rights under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and other welfare schemes. Under the Indira Gandhi National Old Age Pension Scheme, Rs 200/- and Rs 500/- was fixed for persons between age of 60-70 and above 80 respectively. Said

amount was fixed more than a decade ago. No doubt, under the said Scheme, the State Governments have an obligation also but their contribution varies from Rs 500/- to Rs 200/-. The right to live with dignity is a fundamental right recognised by Article 21 of the Constitution. Availability of adequate finances is necessary for a person to live a life of dignity. An elderly person, particularly someone who is in an old age home, is unable to look after himself needs financial assistance. This can be made available only if there is a viable pension scheme that is implemented with sincerity and which can be taken advantage of by an elderly person. **See: Ashwani Kumar Vs Union of India and others (2019) 2 SCC 636**

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