

UNDERSTANDING IMPORTANT GUIDELINES PASSED IN THE JUDGEMENT OF MAINTENANCE IN THE LANDMARK JUDGEMENT OF RAJNESH V/S NEHA & OR

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This article aims at giving a comprehensive understanding of the landmark judgement of Rajnesh v/s Neha & Or. The Judgement is divided into Part A and B. Part A mentions the Order passed in Criminal Appeal No. 730 of 2020 and Part B gives a detailed explanation of the guidelines and directions along with relevant provisions and judgements.

There are legislations framed on the issue of maintenance for the protection of women and children. These laws have been enacted as a measure of social justice to provide recourse of financial support to dependent wives and children.

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

Part B explains in detail the Guidelines/ Directions on Maintenance.

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

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

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

In Bhagwan Dutt V/s Kamla Devi (1975) 2 SCC 386, the Supreme Court has held that under S.125 (1) Cr.P.C only a wife who is ‘unable to maintain herself ’ is entitled to seek maintenance.

In Chaturbhuj v Sitabai (2008) 2 SCC 316, this Court held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and

destitution of a deserted wife by providing her food, clothing and shelter by a speedy remedy. Section 125 of the Cr.P.C. is a measure of social justice especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution.

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

In *Chanmuniya v Virendra Kumar Singh Kushwaha & Anr.* (2011) 1 SCC 141 before the Supreme Court, discussed the issue where parties are in a live-in relationship for a long time period, in absence of legal necessities of a valid marriage, such a woman would be entitled to maintenance. This judgment was referred to a larger bench.

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

In *Kamala & Ors V/s Mohan Kumar* (2019) 11 SCC 491 matrimonial proceedings where strict proof of marriage is essential, in proceedings u/S. 125 [Cr.P.C.](#) such strict standard of proof is not necessary.

The Judgement further discusses the relevant provisions and Judgements under the Protection Protection of Women from Domestic Violence Act, 2005 (“D.V. Act”)

In *Hiral P. Harsora & Ors. v Kusum Narottamdas Harsora & Ors.*¹¹ this Court held that the “respondent” could also be a female in a domestic relationship with the aggrieved person. [Section 3](#) of the D.V. Act gives a gender- neutral definition to “domestic violence”.

In this judgement it was further discussed in Section 17(2) makes it clear that the aggrieved person cannot be evicted or excluded from a shared household or any part of it by the “respondent” save in accordance with the procedure established by law. If “respondent” is to be read as only an adult male person, it is clear that women who evict or exclude the aggrieved person are not within its coverage, and if that is so, the object of the Act can very easily be defeated by an adult male person not standing in the forefront, but putting forward female persons who can therefore evict or exclude the aggrieved person from the shared household. This again is an important indicator that the object of the Act will not be sub-served by reading “adult male person” as “respondent”.

The judgement discusses about “shared household” along with the relevant judgements.

For a live-in relationship to fall within the expression “relationship in the nature of marriage”, this Court in *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755 laid down the following

guidelines: (a) duration of period of relationship; (b) shared household; (c) domestic arrangements; (d) pooling of resources and financial arrangements; (e) sexual relationship; (f) children; (g) socialisation in public and (h) intention and conduct of the parties. The Court held that these guidelines were only indicative, and not exhaustive.

With regard to Conflicting judgments on overlapping jurisdiction, some High Courts have taken the view that since each proceeding is distinct and independent of the other, maintenance granted in one proceeding cannot be adjusted or set-off in the other. For instance, in *Ashok Singh Pal v Manjulata*, AIR 2008 MP 139, the Madhya Pradesh High Court held that the remedies available to an aggrieved person under S. 24 of the HMA is independent of S. 125 of the Cr.P.C. There are several more judgements discussed with regards to this point.

The issue of overlapping jurisdictions under the HMA and D.V. Act or Cr.P.C. came up for consideration before a division bench of the Delhi High Court in *RD v BD*, 2019 VII AD (Delhi) 466, wherein the Court held that maintenance granted to an aggrieved person under the D.V. Act, would be in addition to an order of maintenance u/S. 125 Cr.P.C., or under the HMA. The legislative mandate envisages grant of maintenance to the wife under various statutes. It was not the intention of the legislature that once an order is passed in either of the maintenance proceedings, the order would debar re-adjudication of the issue of maintenance in any other proceeding.

In *Sudeep Chaudhary v Radha Chaudhary*, (1997) 11 SCC 286, the Supreme Court directed adjustment in a case where the wife had filed an application under Section 125 of the Cr.P.C., and under HMA. In the S. 125 proceedings, she had obtained an order of maintenance. Subsequently, in proceedings under the HMA, the wife sought alimony. Since the husband failed to pay maintenance awarded, the wife initiated recovery proceedings. The Supreme Court held that the maintenance awarded under Section 125 Cr.P.C. must be adjusted against the amount awarded in the matrimonial proceedings under HMA, and was not to be given over and above the same.

To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, we direct that in a subsequent maintenance proceeding, the applicant shall disclose the previous maintenance proceeding, and the orders passed therein, so that the Court would take into consideration the maintenance already awarded in the previous proceeding, and grant an adjustment or set-off of the said amount. If the order passed in the previous proceeding requires any modification or variation, the party would be required to move the concerned court in the previous proceeding.

Payment of Interim Maintenance

The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f.24.09.2001), and the third proviso to Section 125 Cr.P.C. (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days' from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that applications remain pending for several years in most of the cases.

The party claiming maintenance either as a spouse, or as a partner in a civil union, live-in relationship, common law marriage, should be required to file a concise application for interim maintenance with limited pleadings, alongwith an Affidavit of Disclosure of Assets and Liabilities before the concerned court, as a mandatory requirement.

The Delhi High Court in a series of judgments beginning with *Puneet Kaur v Inderjit Singh Sawhney*, and followed in *Kusum Sharma v Mahinder Kumar Sharma* (“Kusum Sharma I”) (2015) 217 DLT 706 directed that applications for maintenance under the HMA, HAMA, D.V. Act, and the Cr.P.C. be accompanied with an Affidavit of assets, income and expenditure as prescribed. In *Kusum Sharma IV*, 2017 – (2018) 246 DLT 1 the Court took notice that the filing of Affidavits alongwith pleadings gave an unfair advantage to the party who files the affidavit subsequently. In this judgment, it was clarified that the Affidavit must be filed simultaneously by both parties. In *Kusum Sharma V*, decided by the Delhi High Court vide Judgement dated 6/8/2020, the Court consolidated the format of the Affidavits in the previous judgments, and directed that the same be filed in maintenance proceedings.

Keeping in mind the varied landscape of the country, and the recommendations made by the SLSAs (State Legal Services Authorities), it was submitted that a simplified Affidavit of Disclosure may be framed to expedite the process of determining the quantum of maintenance.

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

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

Some of the few guidelines mentioned are as follows:-

- > The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court / District Court / Magistrate’s Court, as the case may be, throughout the country;
- > The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;
- > The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The Courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent.
- > If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the Court to serve interrogatories, and seek production of relevant documents from the opposite party under Order XI of the CPC;

On filing of the Affidavit, the Court may invoke the provisions of Order X of the C.P.C or Section 165 of the Evidence Act 1872, if it considers it necessary to do so;

The income of one party is often not within the knowledge of the other spouse. The Court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

- If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended / supplementary affidavit, which would be considered by the court at the time of final determination.
- The concerned Family Court / District Court / Magistrate's Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

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

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

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

The next Guideline covered is criteria for determining quantum of maintenance.

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

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

The Delhi High Court in *Bharat Hedge v Smt. Saroj Hegde*, 40(2007) DLT 16 laid down the following factors to be considered for determining maintenance

1. Status of the parties.
2. Reasonable wants of the claimant.
3. The independent income and property of the claimant.
4. The number of persons, the non-applicant has to maintain.
5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home.
6. Non-applicant's liabilities, if any.
7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant.
8. Payment capacity of the non-applicant.
9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed.
10. The non-applicant to defray the cost of litigation.

Certain additional factors would also be relevant for determining the quantum of maintenance payable:-

- (a) Age and employment of parties
- (b) Right to residence
- (c) Where wife is earning some income.

The Courts have held that if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband. The Courts have provided guidance provided in the judgments mentioned.

In *Shailja & Anr. v Khobbanna*, (2018) 12 SCC 199, this Court held that merely because the wife is capable of earning, it would not be a sufficient ground to reduce the maintenance awarded by the Family Court. The Court has to determine whether the income of the wife is sufficient to enable her to maintain herself, in accordance with the lifestyle of her husband in the matrimonial home. *Chaturbhuj v Sita Bai* (2008) 2 SCC 316.

In *Sunita Kachwaha & Ors. v Anil Kachwaha* (2014) 16 SCC 715 the wife had a postgraduate degree, and was employed as a teacher in Jabalpur. The husband raised a contention that since the wife had sufficient income, she would not require financial assistance from the husband. The Supreme Court repelled this contention, and held that merely because the wife was earning some income, it could not be a ground to reject her claim for maintenance.

The Bombay High Court in *Sanjay Damodar Kale v Kalyani Sanjay Kale* 2020 SCC Online Bom 694, while relying upon the judgment in *Sunita Kachwaha* (supra), held that neither the mere potential to earn, nor the actual earning of the wife, howsoever meagre, is sufficient to deny the claim of maintenance.

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

The Next **Guideline** discussed in this judgement is that there is no provision in the HMA with respect to the date from which an Order of maintenance may be made effective. Similarly, Section 12 of the D.V. Act, does not provide the date from which the maintenance is to be awarded.

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

The next guideline discussed in this judgement is about the Enforcement of orders of maintenance Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law.

The Bombay High Court in *Sushila Viresh Chhawda v Viresh Nagsi Chhawda* held that :

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

An application for execution of an Order of Maintenance can be filed under th/e following provisions :

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

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

(c) Section 128 of Cr.P.C. before the Magistrate’s Court.

(ii) Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with the CPC / Cr.P.C.

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

In *Kaushalya v Mukesh Jain*, the Supreme Court allowed a Family Court to strike off the defence of the respondent, in case of non-payment of maintenance in accordance with the interim order passed.

The Delhi High Court in *Satish Kumar v Meena*, 2001 (60) DRJ 246, held that the Family Court had inherent powers to strike off the defence of the respondent, to ensure that no abuse of process of the court takes place.

Discussion and Directions on Enforcement of Orders of Maintenance The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order XXI.

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

(a) Issue of overlapping jurisdiction:

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

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

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

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

(b) Payment of Interim Maintenance:

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

(c) Criteria for determining the quantum of maintenance:

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

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

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

(e) Enforcement / Execution of orders of maintenance.

For enforcement / execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28A of the Hindu Marriage Act, 1956; Section 20(6) of the D.V. Act; and Section 128 of Cr.P.C., as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 R.W. Order XXI.