MADHYA PRADESH STATE JUDICIAL ACADEMY
HIGH COURT OF M.P., JABALPUR

READING MATERIAL
ON

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

2016

COMPILED AND EDITED
BY

OFFICERS OF THE ACADEMY

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CHAPTER-I

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

PART-I

ARTICLES

WOMEN'S EMPOWERMENT—ROLE OF JUDICIARY AND LEGISLATURE

(Text of the address delivered by Hon'ble Shri Justice R.C. Lahoti, Former Chief Justice of India at the release of book entitled "Search for a Vision Statement on Women Empowerment vis-à-vis Legislation & Judicial decisions)

Introductory

The leaders of the Indian judiciary and those who feel convinced of the need for women's empowerment—by law and by legal means—have assembled here today to have a free, frank and heart-to-heart discussion on women's empowerment *vis-a-vis* legislation and judicial decisions. It is a welcome move. I would not, even for a moment, subscribe to the view that the Indian judiciary is not sensitive to the needs of justice. It is one of the judiciaries in the world which enjoys a high reputation of being justice-sensitive. However, the National Commission for Women feels that it should be more gender-justice-sensitive.

During the last three decades there has been a sea change in the concept of women's empowerment. I am reminded of a dialogue from *A Doll's House* written by Henrik Ibsen. Helmer tells Nora—"First and foremost, you are a wife and mother." Nora replied—"That I don't believe any more. I believe that first and foremost, I am an individual, just as much as you are." This dialogue carries a forceful message. A woman today expects herself—and rightly so—to be treated as an individual, a living human being, entitled to the same dignity and status, as her male counterparts.

International treaties and conventions

The 20th century has witnessed the upsurge of women empowerment movement universally. The Universal Declaration of Human Rights (1948) reaffirming faith in the fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women, contemplated the entitlement of all cherished freedoms to all human beings without any distinction of any kind, including discrimination based on sex. The World Conference on Human Rights at Vienna in 1993 had declared the human rights of women and the girl child to be

"inalienable, integral and indivisible part of universal human rights" and eradication of any form of discrimination on the basis of sex, is the priority objective of the international community. The Convocation on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 is the United Nations' landmark treaty marking the struggle for women's rights. Described as the Bill of Rights for women, it spells out what constitutes discrimination against women and propagates strategies based on "non-discriminatory" model, so that women's rights are seen to be violated, if women are denied the same rights as men. General Recommendation 19 to CEDAW, formulated in 1992, deals entirely with the violence against women and explicitly states that gender-based violence is a form of discrimination which seriously inhibits a women's ability to enjoy rights and freedoms on the basis of equality with men and asks State parties to have regard to this, while reviewing their laws and policies. The Declaration on the Elimination of Violence Against Women (1993) is a comprehensive statement of international standards with regard to the protection of women from violence. The Declaration sets out the international norms which States have recognised as being fundamental in the struggle to eliminate all forms of violence against women. Any "grave or systematic violations" are liable to be inquired into and penalised ever since the Optional Protocol of December 2000.

For centuries, women in this country have been socially and economically handicapped. They have been deprived of equal participation in the socio-economic activities of the nation. The Constitution of India has taken a long leap in the direction of eradicating the lingering effects of such adverse forces so far as women are concerned. It recognises women as a class by itself and permits enactment of laws and reservations favouring them. Several articles in our Constitution make express provision for affirmative action in favour of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation. Article 51 of the Constitution obligates the State to honour international law and treaty obligations. Our natural obligation to renounce practices derogatory to the dignity of women has been elevated to

the status of fundamental duty by Article 51-A.

In spite of all these developments, the truth remains that widespread violations of women's rights continue to persist. The forces of globalisation and extremism and the unwillingness of other segments of humanity continue to pose a threat to women's human rights. Structural inequalities and power imbalances facilitate such violations. Urge for easy money, at times greed, facilitating a life full of comforts, possibly luxury, has in the recent few years made women more susceptible to exploitation and violence.

Law versus justice

Laws have taken silent and slow steps in the direction of political participation of women preventing gender biases and removing lacunas in procedural laws and laws relating to evidence. The law cannot change a society overnight, but it can certainly ensure that the disadvantaged are not given a raw deal. The courts can certainly go beyond mere legality insulating women against injustice suffered due to biological and sociological factors. But all law is not justice; nor is all justice law alone. At times there could be more justice without law and likewise there could be times when strict adherence to, or mindless application of laws, could lead to injustice. Justice is a combination of various factors: enactment of laws responsive to the changing needs of time, their effective enforcement, progressive and proactive interpretation and application so as to fill up any void that is left and not taken care of by statutory enactments. It is the law in action and not just the law which is important. If one were to ask to name a significant single factor which could make the delivery of justice, just and meaningful, the answer would be—a sensitised judiciary—a judiciary which views the circumstances and situation in a holistic manner. Judges too have their own philosophy and their own convictions depending on the background wherefrom they come, but then, there is a collective qualitative philosophy of justice dispensation in which personal inhibitions and predilections have no place.

Role of the Indian judiciary

We have this morning assembled together on the invitation of the National Commission for Women to discuss, deliberate and dwell upon

issues relating to women's empowerment *vis-a-vis* legislation and judicial decisions. In such a meet the judges have a two-pronged role to play. Firstly, it is the judiciary which interprets and implements the laws. A judge is an eyewitness to a real-life drama—how the script written by the legislature is played by real-life characters. The parties while critically evaluating the laws may tend to have a partisan look; a judge can make a correct and realistic evaluation of the laws and find out authoritatively the difficulties in implementation of or lacunas in legislation. Today we propose to identify and catalogue such difficulties and lacunas. Secondly, and which is more important, a judge while administering the laws, if deprived of requisite sensitivity may frustrate the objectives sought to be achieved by the best of the laws.

However, one thing shall have to be clearly borne in mind i.e. the role of the judiciary, in the vindication of gender justice. According to Justice V.R. Krishna Iyer, "case-law, creative, imaginative and gender-friendly, has its logic and limitation. Judges cannot make law but only interpret it and decide specific cases and controversies within defined bounds although in that process they do make law interstitially. But legislation is essentially a wider function covering vaster spaces and free to weave fabrics of fundamental mutation. So it is substantive codification, radical in transformation of the social order, that we need, an avant-garde operation Parliament must perform. Magnificently as the judiciary has acted, they have not and could not usurp legislative functions."

Landmark decisions delivered by the Indian judiciary, in particular during the last two decades, bear testimony to the fact that judges cannot be accused of gender injustice. They have shown the requisite sensitivity expected of them. However, all that can be said is that such sensitivity is individual and needs to be institutionalised. The purpose of this meeting is to share the experiences, have an exchange of views and to learn and devise by our experiences a model of gender-justice-sensitisation.

About the book

Let me say a few words about *Search for a Vision Statement on Women Empowerment vis-a-vis Legislation and Judicial Decisions* the book which has been prepared by the Indian Trust for Innovation and Social

Change and published by the National Commission for Women and which I will have the privilege of releasing today. It goes without saying that the National Commission for Women, under the leadership of Dr. Poornima Advani as Chairperson, has done an excellent job. The Commission has carved out its place in the working of Indian constitutional governance. It has succeeded in wiping out tears from the eyes of several aggrieved women and it has certainly succeeded to a large extent in empowering the women by developing their confidence through education, literacy campaigns, philosophy propagation and fieldwork. By the courtesy of Dr. Poornima Advani, I have received several publications brought out by the Commission and turning over the pages I have benefited much by adding to my knowledge and widened my vision.

I have looked into the book *Search for a Vision Statement on Women Empowerment* and I can say without hesitation that it is the obligation of every judge and anyone else concerned with gender justice and women empowerment to read this book from cover to cover. It makes available a lot of vital statistics. It is also a digest of almost all judicial pronouncements relevant to the subject in the field of substantive and procedural law and practices. However, I have a caveat to enter on three points. Firstly, the book projects too high expectations from the judiciary and, while doing so, the concept of separation of powers between legislature, judiciary and executive seems to have been obliterated at some places in the book. It is too much for the Commission to expect from the judiciary to legislate and to vindicate women empowerment by crossing its constitutional and jurisdictional limits. Secondly, in spite of the concept of affirmative action and protective discrimination being acceptable to us as ordained by the Constitution, we cannot afford to overlook certain basics of criminal jurisprudence. We cannot convict an accused even if there is no evidence and even where the standards of proof well settled in criminal jurisprudence are not satisfied. Thirdly, at places the edge of the pen used by the writers seems to have gained more sharpness than needed. Expressions like—"unconcerned and unmindful judges bogged by technicalities in the courts" (p. 41); "The effort of the judge was diverted to proving the accused innocent and that was truly a case of miscarriage of

justice" (p. 67); "There is no quest for social justice but more emphasis is given on technicalities and procedural requirements. In the sample cases cited above, these are only illustrative to show how the attitude of the Judges of the various High Courts are almost the same and similar" (p. 70); and "Insensitive Court" (p. 132) and a few such like observations could have been avoided without compromising with the theme and message of the book; though I do acknowledge that generally encomiums have been showered on the judiciary and the book is full of appreciation recorded with generosity on the gender-sensitive performance of the Indian judiciary.

However, I am not critical of the criticism of the judiciary levelled in the book. It may be zeal or may be overzealousness of the authors. Nevertheless, whatever has been said therein, is with objectivity and all good intentions. I will appeal to the judges and readers to receive the message which is intended to be given by the book.

What do we do

I would suggest the following principles to be kept in mind by the judges to achieve the goal of gender justice:

(*1*) be informed of the historical and cultural background in which the women have lived over the ages and understand their feelings and have regard to their needs as a class;

(*2*) because the women are weaker sections of the society, strike a balance in your approach in dealing with any issue related to gender, or where a woman is victim, in such a way, that the weaker are not only treated as equals but also feel confident that they are equals;

(*3*) treat women with dignity and honour and inculcate confidence in them by your conduct, behaviour and ideology whenever they come to you as victims or seekers of justice;

(*4*) do not allow them to be harassed and certainly do not do anything yourselves which may amount to harassment of a woman; and

(*5*) make efforts to render a woman victim quick, speedy, cheaper and effective justice—true to its meaning.

These are the broad principles. I take this opportunity to share with you a few courtroom tips which I have myself followed as a trial court judge and also as a member of the higher judiciary. These are:

1. Women to be treated with courtesy and dignity while appearing in the court. Any comment, gesture or other action on the part of anyone in or around the courtroom which would be detrimental to the confidence of the women is to be curbed with a heavy hand.

2. Any gender bias is carefully guarded against in the courtroom and this protection should be extended to any female present or appearing in the court either as a member of the staff or as party or witness or member of legal profession. A message should clearly go that any behaviour unbecoming of the dignity of woman shall not be tolerated by the court.

3. Court proceedings involving women must begin on time and proceeded with in an orderly manner and with dispatch so that they are concluded as expeditiously as possible avoiding the need for repeated appearance of women in the court.

4. The examination and cross-examination of women witnesses, in particular in cases relating to violence against women shall be conducted under the supervision of the presiding judge with such care and caution as to avoid prolixity and any harassment to the witness.

5. The female members of the Bar need to be encouraged in the profession, maybe by giving assignments as Court Commissioners for inspections and recording statements of witnesses.

6. Preference may be given to female lawyers in the matter of assigning legal aid work or amicus curiae briefs so that they have more effective appearances in courts.

7. Crime against women ought to be dealt with on priority basis so as to be decided finally at an early date lest the delay should defeat the justice.

Finally, two precautionary observations. Let the issue of gender injustice not be perceived as a war between the two sexes. Long before, when consciousness in society towards gender injustice was not present then resentment on the part of women was justified; but now the approach should be of complementing each other rather than competing on perceptions, which may not be real or may be non-existent. Societal bonds are based upon integration, mutual dependence and respect. They are not just contractual but based on deep organic unity. It is true that the male sex is

most of the time blamed as the inflicter of gender injustice; but it cannot be ignored that the male sex also suffers from and feels pained at gender injustice, as the woman subjected to injustice is sometimes his mother or his daughter or sister or wife. Therefore, perceptional change is needed for greater social awareness and sensitisation which breeds equality of the sexes and not rivalry of the sexes.

Justice Michael Kirby of Australia says-

> "In a pluralist society judges are the essential equalizers. They serve no majority; not any minority either. Their duty is to the law and to justice. They do not bend the knee to governments, to particular religions, to the military, to money, to tabloid media or the screaming mob. In upholding law and justice, judges have a vital function in a pluralist society to make sure that diversity is respected and the rights of all protected."

I would also like to quote Justice Leila Seth—an eminent lady judge, who also held the office of the Chief Justice of a High Court -

"So, can a woman get impartial justice from a man? Or conversely, can a man get impartial justice from a woman? The answer is ... 'Yes' ... in both cases. But judges have to learn the language of equality and be impartial and try and place themselves alternately in the shoes of the two disputants and appreciate the problem and give an objective decision. This process of learning the language of equality is slow—but has to be encouraged. Otherwise there will be no equality and no justice. As one learns a new language when one goes to a new country, so must we learn the language of equality as we enter a new century, with hope and with desire to remove injustice."

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v/;{k

e-i- ekuo vf/kdkj vk;ksx] Hkkiky

vrjk"Vh; ep ij lHkh n'kk u vuHko fd;k fd efgykvksa d ifr ?kjyw fgalk Hkh ekuo vf/kdkj lc/kh ,d fprk dk fo"k; gA l;Dr jk"Vª dh ,d lfefr u o"k 1994 e viuh ,d lHkk e fu.k; fy;k ,o fun'k tkjh fd; fd efgykvksa ij lekt e 0;kIr ?kjyw fgalk dk jkdu d fy; leLr lnL; n'k dkjxkj dkuwh mik; djA

Hkkjr e efgykvksa d ifr ?kjyw fgalk xkeh.k ,o 'kgjh] nkuksa {k=k e 0;kid :i l fo|eku gA u rks vijkf/kd dkuwu vkj u gh nhokuh dkuwu bldh jkdFkke e i.k :i.k lQy jg gA nhokuh fof/k e rks ?kjyw fgalk l ihfMr efgyk dk lHkh idkj dh lgk;rk ikIr gku d fy, mik; gh miyC/k ugh gA Hkkjrh; n.M fo/kku e /kkjk 498 & *v* e doy ,d gh ltk dk iko/kku gA ,lh ifjfLFkfr e ?kjyw fgalk l ihfMr efgykvksa d fgr e ,d 0;kid lfEefJr vijkf/kd ,o nhokuh fof/k ikfjr djuk vko';d gks x;k FkkA bl gr Hkkjr ljdkj u vUrjk"Vª; Lrj ij g, fu.k;k ,o vun'kk d vk/kkj ij ?kjyw fgalk l efgykvksa d lajf{k.k dk vf/kfu;e ikfjr dj fn;k gA bldh tkudkjh gekjh lHkh 'kgjh ,o xkeh.k efgykvksa dk gkuk vko';d g] rkfd ?kjyw fgalk l ihfMr efgyk, vc viu dk ykpkj ,o vlgk; u le>sA

lkj:i e bl vf/kfu;e d e[; iko/kkuksa e 0;oLFkk g ftlls ?kjyw fgalk d fy, nk"kh 0;fDr;k dk rRlcf/kr vijkf/kd fof/k e ltk fey ld ,o bld vykok ihfMr efgykvksa dk fpfdRlh; lfo/kk] vkJ; dh lfo/kk vkj cPpk d ckj e lj{k.k dh lgk;rk fey ldsA vf/kfu;e e ;g Hkh 0;oLFkk g fd tgk dkVfEcd thou iuLFkkfir gku dh lHkkouk g ogk lykg e'kfojk ;k vU; idkj d le>kr gks ldsA lcls egRoi.k iko/kku ?kjyw fgalk dh Hkfo"; e jkdFkke dk gA blls u doy ?kjyw fgalk l ihfMr efgyk dk mipkj feyxk] ijUr vkx Hkh bld ifr ?kjyw fgalk u gks ld ;k ?kjyw fgalk dh lHkkouk ls tks efgyk, Hk;Hkhr g mud fy, U;k;ky;] ,d lj{k.kRed ifr"k/k tkjh dj ldrk gA ;g ,d idkj dk fu"k/kkRed vkn'k g ftle U;k;ky;

fdlh i:"k ;k efgyk dk vkn'k n ldrk g fd og ?kjy fglk u dj vkj ;fn ml vkn'k dk mYy?ku gkrk g rk ml dkjkokl dh ltk l nfMr fd;k tkoxkA

bl vf/kfu;e d vrxr ;fn fglk dh ?kVuk gk pdh g rk mld fy, vkfFkd evkotk nu dk Hkh iko/kku gA

bl vf/kfu;e d e[; iko/kkuk dk le> yu dh vko';drk gA vf/kfu;e d ek/;e l lgk;rk iku d fy, *ihfMr 0;fDr* dh ifjHkk"kk e] o lHkh efgyk, vkrh g tk fdlh xg e] fj'rnkjh d lc/kk d dkj.k jg jgh g vkj ftud fo:) fdlh rjg dh dkb fglk ml ?kj e gb gkA *?kjy lc/k ;k fj'rnkjh* dk ifjHkkf"kr fd;k x;k g] ftle dkb 0;fDr vkilh fj'rnkjh d dkj.k fdlh edku e lkFk jg jgk gk ;k fd ekrk firk dh lrku gk ;k mud chp fookg gvk gk ;k mUg xkn fy;k gk ;k tk fdlh l;Dr ifjokj d lnL; d :i e fuokl dj jg gk] lHkh 'kkfey gA

lfEefyr ifjokj dk xg dh ifjHkk"kk d vulkj ;g ,d ,lk xg ;k ?kj ;k mldk Hkkx g tgk ihfMr 0;fDr vkj nk"kh 0;fDr viu ?kjy lc/kk d dkj.k lkFk&lkFk fuokl dj jg gk ;k bll vk'k; g ,l 'kkfey ;k lfEefyr xg ;k lfEefyr jgokl ftle efgyk dk mld fuokf/kr fuokl dk vf/kdkj g Hky gh ml edku e mldk dkb LokfeRo ;k ekfydkuk gd gk vFkok u gkA *vkJ; xgk* dk Hkh ifjHkkf"kr fd;k x;k g] mld ek;u ,l vkJ; ;k fuokl LFkku l g tk jkT; 'kklu u ml :i e fu/kkfjr fd; g ,o lkotfud tkudkjh d fy; ml gr foKflr tkjh dh gA ,lk vkJ; xg vko';d gvk g rk ihfMr efgykvk dk vkJ; nu d fy, miyC/k djk;k tkoxkA

?kjy fglk dh ifjHkk"kk dkQh 0;kid gA ?kjy fglk e fuEufyf[kr lHkh idkj d vkpj.kk dk leko'k g %&

1- ,lk fdlh Hkh rjg dk njkpj.k ftle ihfMr ?kjy efgyk dh LokLF;] lj{kk] thou rFkk vU; l[k l jgu dh bPNk dk guu gkrk gk ;k ,lk njkpj.k tk ?kjy efgyk dk 'kkjhfjd ;k ekufld n[k nrk gkA ble

ekjihV] HkkoukRed irkMuk] vkfFkd irkMuk vkj uktk;t 'kkjhfjd lEc/k cuku dh dkf'k'k] xkyh ;k rku nuk vkfn lfEefyr gA

2- dkb ,lh idkj dh irkMuk ;k fglk ftle fdlh L=h dk bl ckr d fy, etcj fd;k tk; fd og fdlh rjh dh vufpr ekx ;k ngt dh ifr djA

3- mi;Dr of.kr idkj dk njkpj.k] efgyk d fdlh vU; fj'rnkj d fo:) bl mnn'; l fd ?kjy efgyk ij mldk ncko iMA fdlh vU; idkj dh irkMuk ftll 'kkjhfjd ;k ekufld d"V efgyk dk gkA 'kkjhfjd irkMuk e mld LokLF; dk u"V dju dh p"Vk] ekjihV] Mjkuk&/kedkuk rFkk gj rjg dh ;ku irkMuk ;k vieku tk efgyk dh ifr"Bk d ifrdy gk] og Hkh 'kkfey gA

4- ekf[kd vkj HkkoukRed irkMuk e] mldk viekfur djuk] mldk xkyh nuk ;k mldk mykguk nuk bl dkj.k l fd ml i= ;k i=h ;k lrku ugh gb] Hkh 'kkfey gA blh rjg dh irkMuk mld fdlh fj'rnkj d fo:) djuk Hkh mle 'kkfey fd;k x;k gA

5- vkfFkd irkMuk e 'kkfey g fd fdlh idkj dh ,lh dk;okgh ftle efgyk dk mi thfodk d lk/ku de dj fn; tk, ;k jkd fn, tk,A mld Lo; d diM&yRr] toj] cd e tek jkf'k ;k vU; lEifRr l ml cn[ky ;k ofpr fd;k tk, ;k jgokl d fy, vko';d lk/ku ;k lfo/kkvk l ofpr fd;k tk,A

mRihfMr efgyk d fy, vf/kfu;e e db 0;oLFkk, vf/kdkfj;k ,o U;k;ky;k d ek/;e l nh xb g] mue lcl egRoi.k g 'kklu }kjk lj{kd vf/kdkjh dh fu;fDrA lj{kd vf/kdkjh ij ;g mRrjnkf;Ro Mkyk x;k g fd ;fn ml fdlh efgyk d fo:) ?kjy fglk dh tkudkjh feyrh g rk og ml efgyk dk vf/kfu;e d rgr feyu okyh lgk;rk vkj jkgr dh tkudkjh nxk vkj ftle ;g fo'k"k :i l ihfMr efgyk dk le>k;xk fd og pkg rk ?kjy fglk l viu dk cpku d fy, U;k;ky; l ,d fu"k/kkRed vkn'k ikIr dj ldrh g vkj vkfFkd evkotk Hkh ikIr dj ldrh gA bld vykok vko';d gvk rk og viu cPpk dh vfHkj{kk Hkh ekx ldrh gA lj{kd vf/kdkjh dk ;g

Hkh dr0; gkxk fd ihfMr efgyk dk jkgr miyC/k djku d fy, ml fdlh lok Hkkoh efgykvk dh enn fnyok;A ml fof/kd lgk;rk vf/kfu;e e Hkh vkfFkd lgk;rk miyC/k djok; vkj nk"kh 0;fDr;k d fo:) Hkkjrh; nM lfgrk dh /kkjk 498 & v e Hkh nkf.Md idj.k nk;j dju e mldh enn djA bl rjg dh tkudkjh vkj lgk;rk nu d fy, 'kklu ,d lj{kd vf/kdkjh dh fu;fDr gj fty e djxk vkj mldk dke dju dk Hkkxkfyd {k= lfuf'pr djxkA jkT; 'kklu dk fun'k g fd tgk rd gk ld lj{kd vf/kdkjh d in ij efgykvk dh fu;fDr dj] rkfd efgykvk dk viuh f'kdk;r nu e vkj ijke'k yu e dkb fgpd ;k ij'kkuh u gk vkj ml i:"k ox l t>uk u iMA

jkT; 'kklu ij ;g Hkh mRrjnkf;Ro Mkyk x;k g fd ?kjy fglk l ihfMr efgykvk d fy, dN vkJ; LFkku fu/kkfjr dj ,o mld lpkydk ij ;g ck/;rk gkxh fd ;fn dkb lj{kd vf/kdkjh ;k efgyk lekt loh lLFkk fdlh mRihfMr efgyk d fy, vkJ; dh ekx djrh g] rk ,lk vkJ; LFkku nu dh 0;oLFkk djA lj{kd vf/kdkjh ij ;g mRrjnkf;Ro Mkyk x;k g fd og mRihfMr efgykvk dh vkj l lHkh dkuuh dk;okgh vf/kfu;e d rgr Lo; djxk vkj mld fy, vko';d dne mBk;xkA lj{kd vf/kdkjh ml {k= d U;kf;d eftLVV dh n[kj[k e dk; djxk vkj mRihfMr efgyk dh f'kdk;r vko';d dk;okgh gr eftLVV dk igpk;xkA ftu ?kjy fglk d idj.kk e ?kjy 'kkfr dk;e gku dh lHkkouk gk vkj ifjokj VVu l cpk;k tk ldrk gk ogk bl gr vko';d gvk rk lj{kd vf/kdkjh ihfMr efgykvk dk jftLVM lekt loh lLFkk dk ijke'k o lgk;rk ikIr djk;xkA

vf/kfu;e e ?kjy fglk dh f'kdkj efgykvk o cPpk d lj{k.k d fy, xj 'kkldh; lLFkkvk e lokjr efgykvk dh lok, dk yu dk iko/kku ,d vHkrio dne gA dkb Hkh jftLVM efgykvk dh lLFkk bl lc/k e dk; dj ldrh gA mud vf/kdkjk e ;g fn;k x;k g fd ;fn dkb ?kjy fglk dh ?kVuk mud /;ku e vkrh g rk og rRlc/k e ,d fjkV lj{kd vf/kdkjh dk ,o ml {k= d eftLVV dk nxhA mRihfMr efgyk dk MkDVjh tkp Hkh og djk ldrh g ,o lcf/kr ifyl Fkku e Hkh ml vijk/k dh fjkV n ldrh gA

lekt loh lLFkkvk dk dr0; gkxk fd o mRihfMr efgyk vxj xg l fudky nh xb gk rk ml vkJ; xg e ;k viu fuokljr xg e fuokl pky j[ku dh 0;oLFkk djA bl gr vko';d fun'k U;k;ky; l yu d fy, lj{kd vf/kdkjh dh lgk;rk og y ldrh gA bu lekt loh lLFkkvk dk ;g lj{k.k fn;k g fd ;fn o lncf) ,o lnk'k; l fdlh mRihfMr efgyk d i{k e dkb dne mBkr g] rk mud fo:) fdlh rjg dk nkok] dkuuh dk;okgh ;k vijkf/kd idj.k ithc) ugh fd;k tk;xkA

?kjy fglk l cpu o vko';d mipkj iku d fy, lj{k.k] vf/kdkjh ;k efgykvk dh lekt loh lLFkkvk d ek/;e l ml {k= d eftLVV d le{k vkonu ndj ikIr fd;k tk ldrk gA ,d vUrfje fu"k/kkRed vkn'k Hkh eftLVV n ldrk g] ftll nk"kh 0;fDr dk] ihfMr efgyk ij fdlh rjg dh dkb fglk Hkfo"; e dju l jkdk tk ldA vU; tk lgk;rk eftLVV n ldrk g o g %& ihfMr efgyk dk vkJ; LFkku ij igpku dh 0;oLFkk] fglk l tk ml ekufld ,o vkfFkd {kfr gb g mldh ifr d fy, evkotk] cPpk dh lj{kk d fy, lj{kkRed vkn'k] mldh tk;nkn dh lj{kk rFkk vU; lHkh idkj dh lj{kk, tk ,d ?kjy efgyk dk ifr"Bk iod thu d fy, vko';d gA eftLVV d vf/kdkj dh lhek bl gn rd g fd og nk"kh 0;fDr dk mRihfMr efgyk l feyu ij jkd yxk ldrk g] mld vkJ; LFkku ij tku ij jkd yxk ldrk g] og ;fn fdlh dk;ky; ;k lLFkk e lokjr g rk ogk tku d fy, jkd yxk ldrk g blh idkj ml efgyk d fdlh lc/kh ;k cPpk ij fdlh rjg d mRihMu dh dk;okgh dju l jkd yxk ldrk gA ;fn dkb efgyk fdlh ?kjy xg e igy l gh fdlh vyx Hkkx e jg jgh g rk eftLVV dk ;g Hkh vf/kdkj g fd og nk"kh 0;fDr dk vkn'k n ldrk g fd ihfMr efgyk dk ogk l fu"dkflr ugh fd;k tk;xk vkj ml 'kkfr l ml LFkku ij jgu fn;k tk;xkA eftLVV bl rjg dk vkn'k n ldrk g fd nk"kh 0;fDr u rk efgyk dh fdlh lifRr dk [kn&cn djxk ;k ml cpx] u gh ftl edku e efgyk fuokl djrh Fkh ml edku dk gLrkUrfjr djx] rkfd xg fuokl l efgyk ofpr u gk tk;A eftLVV d vf/kdkj dh

lhek ;gk rd tkrh g fd og lfEefyr ifjokj e jg jgh efgyk d xgfuokl
l

nk"kh 0;fDr dk gh fu"dkflr dj ldrk gA vf/kfu;e e gh eftLVV lHkh rjg d vkfFkd lgk;rk efgyk dk n ldrk g tl ml tk fpfdRlk e [kp vk;k mldh ifr mldh lifRr dh gkfu dh ifr mldh dekb e vk;h {kfr dh ifr] mlh rjg mld thou fuokg d fy, HkkRrk tk /kkjk 125 n.M ifØ;k lfgrk e fu/kkfjr gk] mld vfrfjDrA ; lHkh rjg d vurk"k eftLVV d le{k idj.k d nkjku gh ikIr fd; tk ldr g] rkfd mRihfMr efgyk dk rjUr mipkj ikIr gk ld vkj og fujkfJr ,o ykpkj u gk tk;A

nk"kh 0;fDr dk ukfVl nu d ckn ,o lk{; d vk/kkj ij eftLVV tk fu.k; nrk g mld fo:) vihy l= U;k;k/kh'k d le{k rhl fnu e iLrr dju dk iko/kku gA

dN vf/kfu;e d vU; egRoi.k iko/kku g fd lj{kd vf/kdkjh ;fn viu dRr0;k dh vogyuk ;k mi{kk djrk g rk og n.M dk Hkkxhnkj gkxkA mlh idkj nk"kh 0;fDr d fo:) eftLVV u ;fn dkb vrfje ;k vfre vkn'k ikfjr dj efgyk dk dN mipkj nu ;k mRihMu l foyx jgu dk vknf'kr fd;k g vkj nk"kh 0;fDr mldk ikyu ugh djrk g rk og ltk dk ik= gkxkA

,d vkj egRoi.k iko/kku ;g g fd ?kjy fglk d idj.kk e ;g t:jh ugh fd efgyk d lk{; dh if"V e dkb vU; lcr Hkh miyC/k gkA ;fn efgyk d Lor% d lk{; fo'oluh; g rk mld vdy d lk{; d vk/kkj ij U;k;ky; Hkjklk dj ldrk gA bl iko/kku dk dkj.k ;g g fd pkjnhokjh ¼?kj½ e gb efgyk d lkFk fglk dk dkb lk{; feyuk dfBu g] D;kfd vU; dVEc d lnL; Hkh dHkh&dHkh efgyk dk enn ugh djuk pkgr g vkj Lo; mRihMu d nk"kh gkr gA

bl idkj d ?kjy fglk ij efgykvk d fgr e ikfjr vf/kfu;e efgykvk dk lHkh rjg dh lgk;rk nu dh {kerk j[krk g vkj rRlc/k e vf/kdkfj;k ,o U;k;ky;k dk lj{k.k Hkh ikIr djokrk gA bu iko/kkuk dk mfpr mi;kx efgykvk d gkFk e g vkj budk vufpr mi;kx gkdj og

funk"k 0;fDr dh mRihMu dk tfj;k u cu tk;] bldh Hkh [kcjnkjh yu dk mRrjnkf;Ro efgykvk ij gh gA

•

?kjyw fgalk ls efgykvksa dk lj{k.k vf/kfu;e] 2005 dk vrxr eftLVªV rFkk vU; vf/kdkjhx.k dh Hkfedk ,oa lhek,

Hkkjro"k e yxHkx 6500 efgyk, ifro"k ngt nkuo dh HkV gk tkrh g ;k rk] mudk o/k dj fn;k tkrk g ;k mUg tyk fn;k tkrk g vFkok mUg vkRegR;k d fy; foo'k fd;k tkrk g A Hkkjrh; n.M fo/kku e] efgykvk ij dh xb fgalk d lc/k e vud nkf.Md iko/kku g A bld vfrfjDr fgUn fookg vf/kfu;e] 1955] fgUn nRrd ,o Hkj.k ik"k.k vf/kfu;e] 1956 ngt ifr"k/k vf/kfu;e] 1961 cky fookg vojk/k vf/kfu;e] 1929 bEekjy VkfQd ¼fio'ku½ ,DV] 1956 fio'ku vkQ bEekjy VkfQd ,DV] 1972 ,e-Vh-ih- ,DV] 1972 ih-,u-Mh-Vh- ,DV] 1994 rFkk ekuo vf/kdkj lj{k.k vf/kfu;e] 1993 d }kjk Hkh okfNr ifj.kke ikIr ugh fd; tk ld g] Hkyh gh efgykvk d dY;k.k d fy; Hkkjrh; lfo/kku e vkVhdy 15 ,o 16 e fo'k"k 0;oLFkk dh xb g A vrjk"Vªh; Lrj ij jk"Vªh l?k u 1993 e] ;g iLrko ikfjr fd;k fd lHkh lnL; n'k efgykvk ij gku okyh leLr idkj dh fgalkvk dk jkdu d fy; viu&viu n'k e vf/kfu;e ikfjr dj vkj mldk iHkkoh fd;kUo;u gk A blh rkjrE; e ^^Hkkjr o"k e ?kjyw fgalk l efgykvk dk lj{k.k vf/kfu;e 2005** ftl fd vkx vf/kfu;e d :i e lkf/kr fd;k tkoxk] ikfjr fd;k x;k vkj mld lQ fd;kUo;u gr] ^^?kjyw fgalk l efgykvk d lj{k.k fu;e&2006** Hkh fufer fd; x; ftUg vkx fu;e l mYyf[kr fd;k tkoxk A vf/kfu;e d okfNr iko/kkuk dk le>u d fy;] fuEu ifjHkk"kk, v/;;u ;kX; g A

?kjyw fgalk dh ifjHkk"kk e vf/kfu;e dh /kkjk 3 d vrxr fuEufyf[kr 0;ogkjk dk lfEefyr fd;k x;k g A

1- ,lk fdlh Hkh rjg dk n"V crko ftll ihfMr n[kh efgyk dh LokLF;] lj{kk thou rFkk vU; l[k l jgu dh bPNk dk guu gkrk gk ;k ,lk njkpj.k tk ?kjyw efgyk dk 'kkjhfjd ;k ekufld n[k nrk

gk A ble ekjihV] HkkoukRed n[k] vkfFkd n[k rFkk ukt;t 'kkjhfjd lc/k cuku dh dkf'k'k xkyh ;k rku nuk vkfn 'kkfey g A

2- dkb bl idkj dk vR;kpkj ;k fglk] ftle fdlh efgyk dk bl ckr d fy; etcj fd;k tk; fd og fdlh rjg dh ukt;t ekx ;k ngt dh ifr dj A

3- mijkDr of.kr njkpj.k dh dkfV dk bl idkj dk dR;] efgyk d fdlh vU; fj'rnkj d fo:) bl mnn'; l fd ?kj e jgu okyh ?kjy efgyk ij mldk ncko iM A fdlh vU; idkj dk n[k ftll 'kkjhfjd ;k ekufld d"V efgyk dk gk A 'kkjhfjd d"V e mld LokLF; dk u"V dju dh p"Vk] ekjihV] Mjkuk&/kedkuk rFkk gj rjg d ukt;t 'kkjhfjd lc/k cuku dh dkf'k'k ;k vieku tk efgyk dh bTtr vkc: d f[kykQ gk] og Hkh 'kkfey g A

4- ekf[kd vkj HkkoukRed irkMuk e] mldk viekfur djuk] mldk xkyh nuk ;k mldk mykguk nuk] bl dkj.k l fd ml i= ;k i=h ;k lrku ugh gb] Hkh 'kkfey g A blh rjg dh irkMuk mld fdlh fj'rnkj d fo:) djuk Hkh mle 'kkfey fd;k x;k g A

5- vkfFkd d"Vk e 'kkfey g fd fdlh idkj dh ,lh dk;okgh ftle efgyk dk [kku&ihu d lk/kku de dj fn; tk; ;k u fn; tk; A mld Lo; d diM yRr] toj] cd e tek jkf'k ;k vU; lEifRr l mldk cn[ky fd;k tk; ;k ;g lc mll Nhu fy;k tk; ;k fuokl d fy; vko';d lk/ku ;k lfo/kk; mll Nhu yh tko A

''घरेलू संबंध या रिश्तेदारी'' tk fd vf/kfu;e dh /kkjk 2 ¼,Q½ e ifjHkkf"kr g l rkRi; ;gh g fd tc dkb efgyk viu vkilh fj'rnkjh d dkj.k fdlh edku e jg jgh g vFkok g vkj vukond ,d gh firk dh lrku gk ;k mud chp fookg gvk gk vFkok efgyk dk xkn fy;k x;k gk vFkok efgyk fdlh vU; idkj d lc/k d dkj.k vukond d lkFk l;Dr :i l fuokl dj jgh gk] bl vf/kfu;e d vrxr g] n[kh efgyk fdlh Hkh vk;] ox]

tkfr] /ke] ukxfjdrk dh gk ldrh g A

vf/kfu;e d vrxr i;Dr 'kCnkoyh ^^lfEefyr ifjokj dk xg** tk vf/kfu;e dh /kkjk 2 ¼,l½ e ifjHkkf"kr g] dh ifjHkk"kk bl idkj g fd] ;g

,d ,lk xg ;k ?kj ;k mldk Hkkx g tgk n[kh 0;fDr vkj nk"kh 0;fDr viu ?kjy lc/kk d dkj.k lkFk&lkFk fuokl dj jg gk ;k bll vk'k; g] ,l 'kkfey ;k lfEefyr xg ;k lfEefyr jgokl ftle efgyk dk c jkdVkd fuokl dk vf/kdkj g Hky gh ml edku e mldk dkbZ ekfydkuk gd gk vFkok u gk A

cljk xgk@vkJ; LFky@lj{k.k xg l rkRi; vf/kfu;e d i;ktuk d fy; jkT; 'kklu }kjk vf/klfpr fuokl LFkku l g A

vf/kfu;e d lQy fd;kU0;u gsrq ifyl vf/kdkjh] lokinkrk] lj{k.k vf/kdkjh ,oa eftLVªV dh fu;fDr dk iko/kku g rFkk U;kf;d eftLVªV dk] ijke'k nkrk ,oa dY;k.k fo'k"kK l lg;kx yus d fy;s Hkh vf/kdr fd;k x;k g A

1- lj{k.k vf/kdkjh dh Hkfedk&

lj{k.k vf/kdkjh dk ;g mRrjnkf;Ro g fd og fdlh efgyk d fo:) ?kjy fglk dh tkudkjh ikIr gku ij ml efgyk dk bl vf/kfu;e d vrxr miyC/k gk ldu okyh lgk;rkvk vkj jkgr dh tkudkjh n o ml le>k, fd U;k;ky; l] ?kjy fglk d jkdFkke gr vkn'k rFkk {kfrifr /ku] Hkj.k ik"k.k 0;;] cPpk dh n[kj[k ,o fpfdRlk lfo/kk gr vkn'k ikIr dj ldrh g A lj{k.k vf/kdkjh ihfMr efgyk dk lgk;rk ikIr djku d fy; lokHkkoh efgykvk l lg;kx fnyok,xk] fof/kd lgk;rk vf/kfu;e d vrxr okfNr vkfFkd lg;kx ikIr djk,xk rFkk nk"kh 0;fDr;k d fo:) Hkkjrh; n.M fo/kku dh /kkjk& 498 d d vijk/k d fy; vfHk;kx i= iLrr dju e lgk;rk djxk A lj{k.k vf/kdkjh dk ;g Hkh dr0; g fd og ?kjy fglk dh fjikV fu/kkfjr ik:i e fof/k fofgr rjhd l r;kj dj lcf/kr vkj{kh dUn d Hkkjlk/kd ifyl vf/kdkjh dk o ml {k= d lok inkrk dk vxf"kr dj lkFk gh vf/kdkfjrk oky eftLVªV dk fu/kkfjr ik:i e okfNr vurk"k gr] vkonu

i= iLrr dj o mld {k= e miyC/k lj{k.k xgk o fpfdRlh; lfo/kkvk dh ,d lph fufer dj o ihfMrk dk vkJ; LFky@lj{k.k xg e vf/kokflr djkdj lpuk lcf/kr eftLVV o vkj{kh dUn dk dj A ,l lj{k.k vf/kdkjh

iR;d fty e fu;Dr fd; tk;x] ftudk {k= ifjHkkf"kr jgxk o tgk rd gk ld ,l ink ij efgykvk dk fu;Dr fd;k tkoxk ftll fd ihfMr efgyk lykg yu e o f'kdk;r dju e dkb fgpd ;k ij'kkuh dk vuHko u dj A lj{k.k vf/kdkjh lcf/kr eftLVV d fun'kkulkj o mud fu;=.k e dk; djxk A lj{k.k vf/kdkjh d fofo/k dr0; ,o mRrjnkf;Ro g ftudk mYy[k fu;e&8 dh dfMdk&1 dh midfMdk ¼1½ yxk;r ¼14½ e] dfMdk&2 d Hkkx ¼v½ rFkk ¼c½ rFkk fu;e 10 e foLrkj iod mfYyf[kr g] tk fuEukulkj g%&

fu;e 8 dh dfMdk 1 dh midfMdk,¡ ¼1½ yxk;r ¼14½

1- 0;fFkr 0;fDr dk] vf/kfu;e d v/khu dkb f'kdk;r dju d fy; ;fn 0;fFkr 0;fDr bl idkj dh bPNk 0;Dr dj] lgk;rk nuk]

2- vf/kfu;e d v/khu 0;fFkr 0;fDr dk ik:i&4 e fn; x; vf/kdkjk dh tkudkjh miyC/k djkuk tk vxth ;k LFkkuh; Hkk"kk e gkxh]

3- fdlh 0;fDr dk /kkjk 12 ;k /kkjk 23 dh mi/kkjk ¼2½ ;k vf/kfu;e ;k mld v/khu cuk; x; fu;ek d fdUgh mic/kk d v/khu dkb vkonu dju d fy; lgk;rk djuk]

4- /kkjk 12 d v/khu dkb vkonu nu ij ik:i&5 e 0;fFkr 0;fDr d ijke'k l ml fLFkfr e vrofyr [krjk dk fu/kkj.k dju d i'pkr ^^lj{kk ;ktuk** r;kj djuk ftld vrxr 0;fFkr 0;fDr dk vkj ?kjy fglk l fuokfjr dju d mik; Hkh g] vkj

5- 0;fFkr 0;fDr dk jkT; fof/kd lgk;rk lok ikf/kdj.k }kjk fof/kd lgk;rk miyC/k djkuk]

6- 0;fFkr 0;fDr ;k fdlh ckyd dk fdlh fpfdRlk lfo/kk ;k fpfdRlk lgk;rk ikIr dju e lgk;rk djuk ftld vrxr fpfdRlk lfo/kk ikIr dju d fy; ifjogu d lk/ku miyC/k djkuk Hkh g]

7- 0;fFkr 0;fDr ;k fdlh ckyd dk vkJ; d fy; ifjogu inku dju d

fy; lgk;rk djkuk Hkh g]

8- vf/kfu;e d v/khu jftLVhdr lok inkrkvk dk lpuk nuk fd vf/kfu;e d v/khu dk;okfg;k e mudh lokvk dh vi{kk dh tk ldxh

vkj vf/kfu;e d v/khu /kkjk 14 dh mi/kkjk ¼1½ d v/khu ;k /kkjk 15 के अधीन कल्याण विशेषज्ञों को कार्यवाहियों में परामर्शियों के रूप में उसके lnL;k dk fu;fDr dju d fy; lok inkrkvk l vkonu vkef=r djuk]

9- ijke'knkrkvk d :i e fu;fDr d fy; vkonuk dh loh{kk djuk vkj eftLVV dk miyC/k ijkef'k;k dh lph Hktuk]

10- miyC/k ijke'knkrkvk dh lph dk rhu o"k e ,d ckj u; vkonu ekxdj iujhf{kr djuk vkj ml vk/kkj ij ijke'knkrkvk dh iujhf{kr lph dk lc) eftLVV dk Hktuk]

11- /kkjk 9] /kkjk 12] /kkjk 20] /kkjk 21] /kkjk 22] /kkjk 23] ;k vf/kfu;e ;k bu fu;ek d fdUgh mic/kk d v/khu vxf"kr fjikV vkj nLrkotk d vfHky[k ;k ifr;k j[kuk]

12- 0;fFkr 0;fDr vkj ckydk dk ;g lfuf'pr dju d fy; fd 0;fFkr 0;fDr dk ?kjy fglk dh ?kVuk dh fjikV d ifj.kke Lo:i mRihMu ugh fd;k tk jgk g ;k ncko ugh Mkyk tk jgk g] lHkh lHko lgk;rk miyC/k djkuk]

13- 0;fFkr 0;fDr ;k 0;fDr;k] ifyl vkj lok inkrk d chp vf/kfu;e ;k bu fu;ek d v/khu micf/kr jhfr l lid j[kuk]

14- viuh vf/kdkfjrk d {k= e lok inkrkvk] fpfdRlk lfo/kk vkj vkJ;xgk d mfpr vfHky[k j[kuk A

fu;e 8 dh dfMdk 2 dh mi dfMdk,¡ ¼d½ ,oa ¼[k½

2- lj{k.k vf/kdkjh dk /kkjk 9 dh mi/kkjk ¼1½ d [kM ¼d½ l ¼t½ d अधीन, समनुदेशित दायित्वा vkj dR;k d vfrfjDr iR;d lj{k.k vf/kdkjh dk fuEufyf[kr dRr0; gkxk&

¼d½ ?kjy fglk l 0;fFkr 0;fDr;k dk vf/kfu;e vkj bu fu;ek d mic/kk d vulj.k e lj{k.k nuk]

¼[k½ 0;fFkr 0;fDr d fo:) ?kjy fglk dh vkofRr;k dk jkdu d fy;]

vf/kfu;e vkj bu fu;ek d mic/kk d vulj.k e lHkh

;fDr;Dr mik; djukA

fu;e 10 dh dfMdk 1 dh midfMdk;s ^^d** yxk;r ^^p** midfMdk,s 2 o 3 lj{k.k vf/kdkjh ds dfri; vU; dr0;%&

¼1½ ;fn eftLVV }kjk fyf[kr e ,lk dju dk fun'k fn;k tk; rk lj{k.k vf/kdkjh%&

¼d½ lk>h xgLFkh e fuokl d ifjlj e fujh{k.k djxk vkj vkjfHkd tkp djxk ;fn U;k;ky; vf/kfu;e d v/khu 0;fFkr 0;fDr dk ,di{kh; vrfje jkgr nu d lc/k e Li"Vhdj.k dh vi{kk djxk ,l xg fujh{k.k d fy; vkn'k ikfjr djxk]

¼[k½ समुचित जांच करने के पश्चात उपलब्धियों, आस्तियों, बैंक खातों या न्यायालय द्वारा निदेशित किये गये किन्हीं अन्य दस्तावेजों की रिपोर्ट Qkby djxk]

¼x½ 0;fFkr 0;fDrr dk mld 0;fDrxr lkeku dk dCtk djk,xk ftld vrxr migkj vkj vkHk"k.k lk>h xgLFkh dk lkeku Hkh g]

¼?k½ 0;fFkr 0;fDr dk ckydk dh vfHkj{kk iu% ikIr djku e lgk;rk nxk vkj mud v/kh{k.k d v/khu mud fujh{k.k d vf/kdkj dk] tk U;k;ky; }kjk funf'kr fd; tk;] lfuf'pr djxk]

¼M½ eftLVV }kjk funf'kr jhfr e vf/kfu;e d v/khu dk;okfg;k e vkn'kk ftle /kkjk 12] /kjk 18] /kkjk 19] /kkjk 20] /kkjk 21] ;k /kkjk 23 d v/khu vkn'k Hkh g] dk ,lh jhfr e tk न्यायालय द्वारा निदेशित किये गये, प्रवर्तन कराने में न्यायालय की lgk;rk djxk]

¼p½ ;fn vfHkdfFkr ?kjy fglk d vrofyr fdlh vL= d vf/kgj.k

e] ;fn vif{kr gk] ifyl dh lgk;rk yxk A

¼2½ lj{k.k vf/kdkjh ,l vU; dr0;k dk Hkh vuikyu djxk] tk ml jkT; ljdkj ;k eftLVV }kjk vf/kfu;e vkj bu fu;ek dk le;≤ ij iHkkoh dju d fy; leunf'kr fd; tk;A

¼3½ eftLVV fdlh ekey e iHkkoh vurk"k d fy; vkn'kk d vfrfjDr] ekeyk d vPN ic/ku d fy; viuh vf/kdkfjrk d lj{k.k vf/kdkfj;k dk lk/kkj.k 0;ogkj l lcf/kr fun'k Hkh tkjh dj ldxk vkj lj{k.k vf/kdkjh mudk ijk dju d fy; ck/; gkxk A

2- lok inkrk dh Hkfedk&

lok inkrk dh Hkfedk fu;e 13 d vrxr fu;Dr ,lh ithdr lfefr ;k lLFkk lok inkrk gkxh] tk fd 'kklu }kjk fpfUgr dj fu;Dr dh tkrh gA mldk dr0; gkxk fd og ?kjy fglk l ihfMr efgykvk }kjk pkgh xb lgk;rk dk vkonu i=] ml {k= ij vf/kdkfjrk j[ku oky eftLVV ,o lj{k.k vf/kdkjh dk miyC/k djko A ihfMr efgyk dh fpfdRlh; tkp djk; o tkp ifronu dh ifrfyfi lj{k.k vf/kdkjh rFkk lcf/kr vkj{kh dn dk] tgk ?kjy fglk dh ?kVuk gb g] ogk Hkt A ;g Hkh lfuf'pr dj fd ihfMr efgyk dk lj{k.k xg e vkJ; ikIr gk tko] ;fn og ,lh vi{kk djrh g o bl lc/k e lcf/kr vkj{kh dn dk lfpr dj A lok inkrk d ,l lnL; tk ,lh ;kX;rk ,o vuHko j[kr gk tk fd fofgr dh tk,] lEcfU/kr eftLVV के निर्देश पर परामर्शदाता का कार्य करेंगे ।

ijke" knkrk }kjk i;kx e vku okyh ifd;k ,o mld }kjk fd; tku oky vif{kr lg;kx dk mYy[k fu;e&14 dh dfMdk 1 yxk;r 17 e foLrkj iod mfYyf[kr g tk fd fuEukulkj g &

¼1½ ijke'knkrk] U;k;ky; ;k lj{k.k vf/kdkjh ;k nkuk d lk/kkj.k v/kh{k.k d v/khu dk; djx A

¼2½ ijke'knkrk] 0;fFkr 0;fDr ;k nkuk i{kdkjk dh fdlh lfo/kktud LFkku ij cBd cyk,x A

¼3½ ijke'k d fy; cyk, x; dkjdk d vrxr ,d dkjd ;g Hkh gkxk fd

iR;Fkh ;g opuc/k nxk fd og ,lh ?kjy fglk l tk ifjoknh }kjk शिकायत की गई है, दूर रहेगा और समुचित मामले में यह वचनबंध देगा कि वह मिलने का प्रयास नहीं करेगा या परामर्शदाता के समक्ष परामर्श dk;okfg;k ;k l{ke vf/kdkfjrk d U;k;ky; d vkn'k l fof/k ;k आदेश से अनुज्ञेय के सिवाय संसूचना की किसी रीति में पत्र या टेलीफोन, byDVkfud ey ;k fdlh vU; ek/;e d }kjk gk] lid dju dk i;kl ugh djxk A

¼4½ परामर्शदाता, परामर्श कार्यवाहियों को यह ध्यान में रखते हुए संचालित करेगा fd ijkमर्श यह आश्वासन प्राप्त करने की प्रकृति का हो कि घरेलू हिंसा की iujkofRr ugh gkxhA

¼5½ प्रत्यर्थी को परामर्श के दौरान घरेलू हिंसा के अभिकथित कृत्य के लिये fdlh Hkh ifr&vkfpR; ¼counter-justification½ dk vfHkokd dju d fy; vuKkr ugh fd;k tk,xk vkj iR;Fkh }kjk ?kjy fglk d dR; d fy; कोई न्यायोचित परामर्श कार्यवाहियां, जो कार्यवाहियां प्रारंभ होने से पूर्व iR;Fkh dh tkudkjh e gkuh pkfg;] d Hkkx dk vuKkr ugh fd;k tk;xkA

¼6½ iR;Fkh ijke'knkrk dk ;g opuc/k nxk fd og 0;fFkr 0;fDr }kjk f'kdk;r e of.kr ,lh ?kjy fglk dju l viu vkidk nj j[kxk vkj उपयुक्त मामलों में यह वचन देगा कि वह परामर्शदाता के समक्ष परामर्श dk;okfg;k d flok; feyu ;k i= ;k VyhQku ;k b&ey ;k fdlh vU; ek/;e l llpuk dju dk i;kl ugh djxkA

¼7½ यदि व्यथित व्यक्ति इस प्रकार की इच्छा करे, तो परामर्शदाता मामले के lek/kku d fy; i;kl djxkA

¼8½ ijke'knkrk d i;kl dh lhfer ifjf/k e ;g lfEefyr g fd og

0;fFkr 0;fDr dh f'kdk;r dk le> vkj f'kdk;r dk lokRre lHko jhfr l nj dj vkj f'kdk;rk dk nj dju gr mipkj ;k mik; [kktu ij /;ku dfnr djA

¼9½ ijke'knkrk 0;fFkr 0;fDr dh f'kdk;r d lek/kku d fy; ijke'k d fy; i{kdkjk }kjk l>k; x; mik;k ;k mipkjk dk /;ku e j[kr g, le>krk d fuc/kuk dh iuh jpuk djr g, f'kdk;rk dk nj dju d mik; l>k dj fookn d lek/kku ij igpu dk i;kl djxkA

¼10½ ijke'knkrk Hkkjrh; lk{; vf/kfu;e] 1872 ;k flfoy ifd;k lfgrk] 1908 ;k n.M ifd;k lfgrk] 1973 d mic/kk }kjk vkc) ugh gkxk vkj mldk dk; fu"i{krk vkj U;k; fl)krk l ekx nf” kr gkxk vkj mldk mnn'; 0;fFkr 0;fDr d lek/kku in :i e ?kjy fglk dk lekIr djuk gkxk vkj ijke'knkrk bl fufeRr ,l i;kl djr le; 0;fFkr 0;fDr dh bPNkvk vkj lonukvk dk lE;d /;ku j[kxkA

¼11½ ijke'knkrk] eftLVV dk lefpr dk;okgh d fy; ;FkkHko 'kh?k viuh fjikV nxkA

¼12½ ijke'knkrk fookn d lek/kku ij igpr le; og le>kr d fuc/kuk dk vfHkfyf[kr djxk vkj ml i{kdkjk }kjk i"Bkfdr djk,xk A

¼13½ U;k;ky;] lek/kku dh iHkkodkfjrk d ckj e lek/kku gk tku ij vkj i{kdkjk l vkjfHkd iNrkN dju d i'pkr rFkk ,l lek/kku d fy; dkj.kk dk vfHkfyf[kr dju d i'pkr ftld vrxr iR;Fkh }kjk ?kjy fglk dh ifjf/k e vku oky dR; dju dh Lohdfr ij ,l dR; dh iujkofRr dju l fojr jgu d fy; iR;Fkh l opuc/k yuk lfEefyr g] fuc/kuk dk 'krk lfgr ;k jfgr Lohdkj dj ldxk A

¼14½ U;k;ky; dk ijke'k dh fjikV l lek/kku gk tku ij le>kr d fuc/kuk dk vfHkfyf[kr djr g, dkb vkn'k ikfjr djxk ;k 0;fFkr 0;fDr d vujk/k ij i{kdkjk dh lgefr l le>kr d fuc/kuk dk mikrfjr djr g, dkb vkn'k ikfjr djxk A

¼15½ mu n'kkvk e tgk ijke'k dk;okfg;k ij fdlh le>kr d fu"d"k ij ugh igpk tk ldrk gk ogk ijke'knkrk ,lh dk;okfg;k d vlQy

gku dh fjikV U;k;ky; dk nxk vkj U;k;ky; vf/kfu;e d mic/kk d vulkj ekey e dk;okgh djxk A

¼16½ ekey e dk;okfg;k d vfHky[k lkjoku vfHky[k ugh le> tk;x] ftud vk/kkj ij dkb lnHk vFk fudkyk tk ld ;k doy mld vk/kkj ij vkn'k ikfjr fd;k tk ldxk A

¼17½ U;k;ky; /kkjk 25 d v/khu doy ;g lek/kku gk tku ij fd ,l fdlh vkn'k d fy; vkonu cy] diV ;k iihMu ;k fdlh vU; dkj.k d }kjk fu"Qy ugh gkxk] vkn'k ikfjr djxk vkj ml vkn'k d ,l lek/kku d fy; dkj.k vfHkfyf[kr fd, tk,x ftld vrxr iR;Fkh }kjk fd;k x;k dkb opuc/k ;k ifrHkfr Hkh gk ldxhA

3 eftLVªV dh Hkfedk&

vf/kfu;e dh /kkjk 5 d vrxr ifyl vf/kdkfj;k ^^lok inkrkvk** lj{k.k vf/kdkfj;k lfgr eftLVV dk ;g dr0; g fd ;fn mUg ?kjy fglk dh f'kdk;r ikIr gk ;k ?kjy fglk dh ?kVuk mudh mifLFkfr e gk ;k ?kjy fglk dh lpuk mUg nh xb gk rk o 0;fFkr 0;fDr dk ;g lpuk nx fd ml ;g vf/kdkj ikIr g fd og vf/kfu;e d vrxr fofHkUu vurk"k ikIr dju gr vkonu i= iLrr dj] ml lok inkrk vkj lj{k.k vf/kdkjh dh lok, ikIr gk ldrh g] ml fof/kd lok ikf/kdj.k vf/kfu;e] 1987 d vrxr fu'kYd fof/kd lgk;rk ikIr gk ldrh g] vkj og tgk llxr gk ogk Hkk-n-fo- dh /kkjk 498&d d vrxr ifjokn lfLFkr dj ldrh gA

vf/kfu;e dh /kkjk 12 d vrxr 0;fFkr 0;fDr Lo; ;k mldh vkj l fufeRr dkb vU; 0;fDr ;k lj{k.k vf/kdkjh eftLVV d le{k vf/kfu;e d vrxr vurk"k ikfIr gr vkonu i= iLrr dj ldr g A vkonu i= ikIr gku ij eftLVV l ;g vif{kr g fd luokb dh iFke frfFk ,lh fu;r dj

tk lkekU;r% vkonu ikfIr dh frfFk l rhu fnol l vf/kd dh u gk A ;g Hkh vif{kr g fd eftLVV ,l vkonu i= dk iFke luokb frfFk l 60 fnu dh dkykof/k e fujkdj.k dk i;kl djA

?kjy fglk dh ?kVuk fl) ik; tku ij eftLVV }kjk inRr dh tk ldu okyh lgk;rk,%&

1- lj{k.k vkn"k %& vf/kfu;e dh /kkjk 18 d vrxr eftLVV dk अधिकार होगा कि वह पीड़ित महिलाओं के पक्ष में संरक्षण आदेश पारित करे ftld vrxr og vukond dk iFke n"V;k] ?kjy fglk ?kfVr gkuk ik; tku ij] ;k ?kVu dh lHkkouk gku ij] vukond dk fu"k) djxk fd og ?kjy fglk dk dkb dR; ugh djxk vkj u ,l dR; dju e] dkb lgk;kx ;k n"ifjr djxk A ihfMr efgyk d fu;ktu d LFkku vkj ;fn dkb ckfydk@ckyd g rk mld fo|k v/;;u d LFkku ij vukond dk tku d fu"k) dj ldxk A vukond ihfMr 0;fDr l fdlh Hkh idkj l o fdlh Hkh ek/;e l] lEid LFkkfir dju l jkd ldxk o vukond ,o ihfMr d l;Dr [kkrk d lpkyu vkj ;fn [kkr iFkd&iFkd gk rk mud lpkyu l fu"k) dj ldrk g A ihfMr efgyk d vU; vkfJr o fj'rnkjk d ifr fglk dju l jkd ldrk g o vU; tk Hkh lj{k.k vkn'k vko';d gk og Hkh inku dj ldrk g A

2- fuokl vkn"k%& vf/kfu;e dh /kkjk 19 eftLVV dk bl vf/kfu;e d vrxr] ?kjy fglk l ihfMr efgyk dk] l;Dr ifjokj xg e fuokl djku d lc/k e vkn'k ikfjr dju dh 'kfDr g A lkFk gh ihfMr efgyk dk l;Dr ifjokj xg e fuokl l P;r u dj vkj mld vkf/kiR; e fdlh Hkh idkj l ck/kk mRiUu u dju d fy; fu"kf/kr Hkh dj ldrk g A vukond rFkk mld fj'rnkjk dk l;Dr ifjokj xg l nj jgu o mle io'k dju l fuf"k) dj ldrk gA vukond dk l;Dr ikfjokfjd xg e] mld LoRo dk R;kxu l Hkh ml fu"k) dj ldrk g vkj ihfMr efgyk pkg rk ml odfYid 0;oLFkk d vrxr fdjk; l] ,d vU; LFkku] mld Lrj dk] vukond l ihfMr efgyk dk fnyk;k tk ldrk g] ftldk fdjk;k Hkxrku vukond }kjk fd;k

tkoxk A ihfMr efgyk dh lj{kk o mld lrku dh lj{kk d fy; vU; vko';d 'kr Hkh eftLVV] vf/kjkfir dj ldrk g tlk fd vukond l ifrHkfr ;k ifrKk i= fu"ikfnr djkuk vkfn A

vf/kfu;e dh /kkjk 19 l ;g iko/kku g fd ihfMr efgyk d fuokl LFkku l gV tku vFkkr l;Dr fuokl xg l gV tku dk vkn'k tk /kkjk 19 dh dfMdk, ¼1½ dh midfMdk, ^^c** e fn;k tk ldrk g og fdlh efgyk d fo:) ugh fn;k tk;xk A

3- ekfnd lgk;rk vkn"k %& vf/kfu;e dh /kkjk 20 d vrxr eftLVV ihfMr efgyk dk ekfnd vurk"k miyC/k djk ldrk g] ftld vrxr efgyk }kjk ?kjy fglk d ifj.kke Lo:i gb {kfr;k dh ifrifr vturk dh gkfu] fpfdRlh; 0;;] ihfMr efgyk dk fdlh lifRr ;k mld mi;kx l ofpr dju ;k lifRr udlku dju ;k lifRr dk u"V dju l gb {kfr ifr rFkk ihfMr efgyk o mld lrku vkfn d Hkj.k ik"k.k gr lgk;rk miyC/k djk;k tkuk vf/kdr g A

4- vfHkj{kk vkn"k %& vf/kfu;e dh /kkjk 21 d vrxr eftLVV vkonu i= dh luokb d fdlh Hkh de ij lrku ;k lrkuk dh vfHkj{kk] ihfMr 0;fDr dk n ldrk g A ;fn eftLVV lr"V gk fd vukond }kjk HkV dju ij ihfMr ;k lrku dk dkb {kfr ugh gkxh] rHkh vukond dk HkV dh vuefr n ldr g A

5- {kfrifr vkn"k %& vf/kfu;e dh /kkjk 22 d vrxr eftLVV ihfMr 0;fDr }kjk vkonu i= nu ij ?kjy fglk l mRiUu ekufld irkMuk ;k HkkoukRed {kfr d ifrdj d :i e] {kfrifr gr jkf'k Hkxrku dk vkn'k] vukond d fo:) ikfjr dj ldrk gA

6- vUrfje o ,di{kh; vkn"k %& vf/kfu;e dh /kkjk 23 d vrxr eftLVV dk ;g vf/kdkj g fd og ;Fkkfpr fLFkfr;k e vrfje vkn'k rFkk lrk"k gku ij fd vukond ?kjy fglk dk dR; dj jgk g ;k dju okyk g] ,d i{kh; vkn'k Hkh vf/kfu;e dh /kkjk& 18] 19] 20] 21 ;k 22 d vrxr inku dj ldrk g A

eftLVV }kjk ikfjr fdlh lj{k.k vkn'k ;k vrfje lj{k.k vkn'k dk ioru lfuf'pr fd; tku d fy; mudk Hkx fd;k tkuk vf/kfu;e dh /kkjk

31 d vrxr vijk/k gkuk ?kkf"kr fd;k x;k g vkj ml ,d o"k rd d dkjkokl ;k :i; 20]000@& rd d vFknM l ;k nkuk l n.Muh; cuk;k x;k g A mDr vijk/k vf/kfu;e dh /kkjk 32 d vulkj lK; ,o vtekurh; g rFkk vf/kfu;e d vrxr mDr vijk/k dk fopkj.k U;kf;d eftLVV iFke J.kh }kjk lf{kIr fopkj.k dh ifd;k vulkj vkj ;FkkHko ,l eftLVV l किया जाना अपेक्षित है जिसके द्वारा संबंधित आदेश पारित किया गया है ।

vf/kfu;e dh /kkjk 31 d vrxr n.Muh; vijk/k d vkjki fuf'pr djr le; eftLVV Hkk-n-fo- की धारा 498–क या दहेज प्रतिशेध अधिनियम के fdlh mic/k d v/khu n.Muh; vijk/k d vkjki Hkh fojfpr dj mDr vijk/kk dk ,d lkFk fopkj.k dj ldrk gA ?kjy fglk l efgykvk dk lj{kj.k fu;e 2006 d fu;e 15¼6½ d vulkj eftLVV ,l idj.kk e Hkk-n-fo- dh /kkjk 498&d ;k ngt ifr"k/k vf/kfu;e d fdlh mic/k d v/khu n.Muh; vijk/k dk fopkj.k vf/kfu;e dh /kkjk 31 d vrxr n.Muh; vijk/k d fopkj.k l iFkd dj ldrk g A

vf/kfu;e dh /kkjk 19 d vrxr fuokl lc/kh vkn'k ikfjr dju ij mld iHkkoh ioru d fy; eftLVV ,lh vfrfjDr 'kr vf/kjkfir dj ldrk g ;k vU; fun'k n ldrk g tk ;fDr;Dr ,o vko';d irhr gk A eftLVV ifrikFkh ¼vukond½ l ?kjy fglk fd;k tkuk jkdu gr ifrHkvk lfgr ;k jfgr c/ki= fu"ikfnr dju dh vi{kk Hkh dj ldrk g A blh idkj eftLVV संबंधित आरक्षी केंद्र के भारसाधरक अधिकारी को यह निर्देश भी दे सकता है कि 0;fFkr 0;fDr dk lj{k.k inku dj ;k vkn'k d fd;kUo;u e lcf/kr dk lgk;rk inku dj A

vf/kfu;e dh /kkjk 20 d v/khu ikfjr vkfFkd lgk;rk lc/kh vkn'k d fØ;kUo;u gr iR;Fkh d foQy jgu ij eftLVV mld fu;ktd ;k _.kh dk ;g vkn'k n ldrk g fd iR;Fkh dk n; ;k iknHkr etnjh ;k oru dk Hkkx 0;fFkr dk lnk; dj ;k U;k;ky; e tek djk,A

vf/kfu;e d vrxr cuk, x, fu;e 6 ¼5½ d vuqlkj vf/kfu;e dh /kkjk 12 d vrxr iLrr vkonu i= ,o ikfjr fd; x; vkn'k n-i-l- dh /kkjk 125 d iko/kkuk d vuqlkj 0;gr vkj iofrr gkx A bl idkj eftLVV

vf/kfu;e d vrxr ikfjr fdlh vkn'k d vrxr lnk; ;kX; /ku dh olyh d fy; n.M ifd;k lfgrk dh /kkjk 421 l 431 e iko/kkfur fof/k dk i;kx dj ldrk gA bld vfrfjDr vf/kfu;e d iHkkoh fd;kUo;u d fy; vf/kfu;e dh /kkjk 28 ¼2½ U;k;ky; dk leFk cukrh g fd og Lo; d }kjk fu/kkfjr ifd;k dk Hkh viuk ldrk g A

vf/kfu;e dh /kkjk 14 d vrxr eftLVV l ;g vif{kr g fd dk;okgh d fdlh Hkh ide ij mfpr irhr gku ij og nkuk i{kk dk ;k mue l fdlh पक्ष को सेवा प्रदाता के किसी अर्हता प्राप्त सदस्य से परामर्श का निर्देश दें । इसके vfrfjDr vf/kfu;e dh /kkjk 15 d v/khu eftLVV viu dR;k d fuogu e lgk;rk d i;ktu l ifjokj dY;k.k l lEc) fdlh 0;fDr dk] tk ;Fkk lHko efgyk gk] dh lok, ikIr dj ldrk g A idj.k dh vko';drk vuqlkj ;k fdlh i{kdkj }kjk okNk dju ij eftLVV vf/kfu;e d v/khu dh tku okyh dk;okgh dk lpkyu cn dej e dj ldrk g A

vf/kfu;e dh /kkjk 24 eftLVV ij ;g dr0; vf/kjkfir djrh g fd vf/kfu;e d vrxr ikfjr vkn'k dh ,d&,d ifr i{kdkjk lfgr lcf/kr vkj{kh dUn d Hkkjlk/kd vf/kdkjh ,o lok inkrk dk] ;fn mlu ?kjy fglk dh ?kVuk dh lpuk vfdr djkb g] dk inku dj A ,l fdlh vkn'k d ikfjr dju d mijkr llxr ifjfLFkfr;k e vkn'k d ifjoru] mikrj.k ;k ifrlgj.k fd; tku ;kX; ifjoru gku dh n'kk e vf/kfu;e dh /kkjk 25 d v/khu eftLVV l ;g vif{kr g fd dkj.k vfHkfyf[kr djr g, ;Fkkfpr vkn'k ikfjr dj A

?kjy fglk l efgykvk dk lj{k.k fu;e] 2006 dk fu;e 10 eftLVV dk leFk cukrk g fd ,d i{kh; vrfje jkgr inku dju gr Li"Vhdj.k vko';d gku ij og lj{k.k vf/kdkjh dk fyf[kr vkn'k d ek/;e l fun'k n ldrk g fd lk>k xgLFkh ifjlj dk fujh{k.k vkj ikjfHkd tkp dj ifrikFkh dh ifjyfC/k;k] vkfLr;k] cd [kkrk ;k lcf/kr nLrkotk d lc/k e

U;k;ky; e ifronu iLrr dj A

U;k;ky; dk vf/kfu;e d iHkkoh ioru e lgk;rk inku dju gr lj{k.k vf/kdkjh ,d egRoi.k bdkb g vkj og vf/kfu;e ;k eftLVV }kjk

funf'kr fof/k lEer dr0;k dk mfpr :i l fu"iknu dj] ;g lfuf'pr dju d fy; vf/kfu;e dh /kkjk 33 }kjk ;g iko/kkfur fd;k x;k g fd ;fn dkb lj{k.k vf/kdkjh fcuk fdlh i;kIr dkj.k d eftLVV }kjk fufn"V dr0;k dk fuogu dju e foQy jgrk g ;k bdkj djrk g rk ml ,d o"k rd d fdlh Hkh dkjkokl l rFkk :i; 20]000@&& rd d teku l ;k nkuk l nf.Mr fd;k tk ldrk g A fdr /kkjk 34 d vulkj lj{k.k vf/kdkjh dk vfHk;ktu jkT; 'kklu ;k ikf/kdr vf/kdkjh dh io etjh ikIr fd; fcuk ugh gk ldrk g A ,lh n'kk e eftLVV l ;g Hkh vif{kr g fd fdlh lefpr ekey e dr0; d ifr mnklhu lj{k.k vf/kdkjh d fo:) dk;okgh gkuk lfuf'pr dj vkj vko';drkulkj ,l lj{k.k vf/kdkjh d vfHk;ktu gr jkT; 'kklu l io etjh ikIr dju gr dk;okgh dj A

4- ifyl dh Hkfedk%&

ifyl vf/kdkjh dk ;g dr0; g fd og lj{k.k vf/kdkjh lokinkrk vFkok ihfMr efgyk }kjk ?kjy fglk dh tkudkjh nu ij rRdky vf/kfu;e e fu/kkfjr dk;okgh dj o ?kjy fglk dh ijukofRr l ihfMr efgyk dk ljf{kr dju vkj ;fn ?kjy fglk gku okyh g ,lh lpuk ikIr gk rc rRdky ekd ij igpdj jkdFkke dju dh dk;okgh dj lkFk gh eftLVV d fu;=.k e mld }kjk fn; x; vkn'kk ,o fun'kk dk ikyu dj A vf/kfu;e dh /kkjk 5 e Hkh ifyl vf/kdkjh d dr0;k dk mYy[k g tk fuEukulkj g&

vf/kfu;e dh /kkjk 5 e ifyl vf/kdkjh] lokinkrk ,o eftLVV d dr0;k dk mYy[k dfMdk v yxk;r b e fuEu :i e mfYyf[kr fd;k x;k g %&

¼v½ bl vf/kfu;e d v/khu] mld vf/kdkj d ckj e ,d vkonu ndj lj{k.k vkn'k dh lgk;rk ikIr dju d fy;]

& /kuh;@vkfFkd lgk;rk dk vkn'k ikIr dju d fy;]

& vfHkj{kk dk vkn'k ikIr dju d fy;]

& fuokl dk vkn'k ikIr dju d fy;]

& ifrdj ¼{kfrifr evkotk½ dk vkn'k ikIr dju d fy; vkj

& ,l ,d l vf/kd vkn'k ikIr dju d fy;]

¼c½ lok inkrk dh lokvk dh miyC/krk d ckj e]

¼l½ lj{k.k vf/kdkfj;k dh lokvk dh miyC/krk d ckj e]

¼n½ fof/kd lokvk d ikf/kdkjh ox vf/kfu;e 1987 ¼Ø- 39@1987½ d v/khu fu%'kYd ¼e¶r½ fof/kd lokvk d mld vf/kdkj d ckj e]

¼b½ tgk llxr gk (wherever relevant) ogk Hkkjrh; n.M lfgrk ¼Ø- 45@1860½ dh /kkjk 498&d d v/khu f'kdk;r@ifjokn Qkby dju d mld vf/kdkj d ckj e%

ijUr ;g fd bl vf/kfu;e e dkb ckr dk fdlh Hkh jhfr e ;g vFk ugh yxk;k tk;xk ;k ;g 0;k[;k ugh dh tkoxh fd lK; vijk/k dk dkfjr dju d ckj e bfRryk feyu ij fof/k d vulkj dk;okgh dju d dr0; l ml eDr fd;k x;k g ;k NV fey xb gA

5- vkikr dkyhu fLFkfr;k e dk;okgh%&

;fn lj{k.k vf/kdkjh ;k lok inkrk dk bey (e-mail) ;k njHkk"k l] ihfMr 0;fDr ;k vU; 0;fDr }kjk ;g lpuk ikIr gkrh g fd ?kjy fglk dk dR; gk jgk g rc og rRdky ifyl lgk;rk ekxdj ?kVuk LFky ij ifyl d lkFk igpdj fjikV vfHkfyf[kr djx vkj vfoyc lefpr vkn'k gr vkonu eftLVV d le{k iLrr djx A

6- अधिनियम की सीमाएं, व्यापकता एवं विशेषताएं –

¼1½ bl vf/kfu;e dk tEe vkj dk'ehj jkT; dk NkMdkj n'k0;kih foLrkj g A vukond n'k d fdlh vU; LFkku e] vFkkr ?kjy fglk ?kfVr gku d LFkku ij vf/kdkfjrk j[ku oky eftLVV d {k= vFkok jkT; l ckgj

Hkh] 0;kikj] ukdjh ;k fuokl dj jgk gk] rc Hkh ;fn vf/kfu;e dh /kkjk 27 e mfYyf[kr iko/kkuk d vulkj] eftLVV dk fopkjkf/kdkj ikIr g] rc vf/kfu;e dh /kkjk 27 dh mi/kkjk 2 d vulkj eftLVV }kjk /kkjk 18] 19] 20] 21] 22 d vrxr ikfjr vkn'kk] ftudk mYy[k mij

fd;k x;k g] dk fd;kUo;u n'k d fdlh Hkh Hkkx e djk;k tk ldrk g A

¼2½ blh idkj ;gh ,d vf/kfu;e g ftldh luokb e vukond ij fuokg fd; tku oky lpuk i=k d fy;] tlk fd fu;e 12 dh dfMdk ¼1½ d [k.M ^^l** e iko/kku g] 0;ogkj ifd;k fo/kku d vkn'k&5 rFkk n.M ifd;k fo/kku d v/;k;&6 e mfYyf[kr lHkh 0;ogkfjd lk/kuk dk mi;kx fd;k tk ldrk g ,o mDr iko/kkuk d vrxr ikfjr vkn'kk dk ogh ifj.kke gkxk tk fd mDr fo/kkuk e fu/kkfjr g A

¼3½ bl vf/kfu;e dh /kkjk 12 ,o 23 ¼2½ d vrxr iLrr vkonuk dh 'kh?k luokb d fy; ;fn dkb vU; ifd;k mi;kxh gk ldrh gk] rc og lfuf'pr dj] mldk mi;kx fd;k tk ldrk g tlk fd vf/kfu;e dh /kkjk 28 dh mi/kkjk 2 e Li"V :i l mfYyf[kr g A

¼4½ vf/kfu;e dh /kkjk 25 e Hkh ;g iko/kku g fd /kkjk 18 d vrxr fn;k x;k lj{k.k vkn'k rc rd iHkko'khy jgxk] tc rd fd 0;fFkr 0;fDr Lo; ml gVku@fjgkb d fy; vkonu u dj A

¼5½ vf/kfu;e dh /kkjk 26 dh mi/kkjk 1 e ;g iko/kku g fd bl vf/kfu;e dh /kkjkvk 18] 19] 20] 21 rFkk 22 d vrxr ikIr fd; tk ldu oky vkn'k] fdlh vU; o/kkfud dk;okgh] tk fd 0;ogkj U;k;ky;] ifjokj U;k;ky; vFkok fdlh nkf.Md Uk;k;ky; e ihfMr efgyk rFkk bl vf/kfu;e d vrxr ?kjy fglk dkfjr dju oky d fo:) yfcr gk] ml o/kkfud dk;okgh e Hkh] ikIr fd; tk ldr g A Hky gh o/kkfud dk;okgh bl vf/kfu;e d iHkko e vku d io l yfcr gk A

¼6½ vf/kfu;e dh /kkjk 32 dh mi/kkjk 2 e ;g Hkh iko/kku g vf/kfu;e dh

/kkjk 31¼1½ e n.Muh; vijk/k dk ek= ihfMr efgyk dh lk{; d vk/kkj ij gh] fl) ekuk tk ldrk g A

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?kjyw fgalk l efgykvk dk lj{k.k vf/kfu;e] 2005 d vrxr
पारित विभिन्न आदेशों के निष्पादन संबंधी विधि

?kjy fglk l efgyk lj{k.k vf/kfu;e 2006 dk mnn'; efgykvk d lfo/kku }kjk iR;kHkr vf/kdkjk dk iHkkoh lj{k.k inku dju d fy; vkj mul lcf/kr ;k vku"kfxd ekeyk d fy; mic/k djuk g rkfd efgykvk d ifr dVEc d Hkhrj gku okyh fglk l mUg lj{k.k inku fd;k tk ld A

vf/kfu;e d vrxr ,d ;k vf/kd vurk"kk dk ikIr dju gr /kkjk 12 d vrxr vkonu i= Lo; 0;fFkr 0;fDr }kjk vFkok mldh vkj l fdlh vU; 0;fDr }kjk ;k lj{k.k vf/kdkjh }kjk eftLVV d le{k iLrr fd;k tk ldrk g A vf/kfu;e d vrxr fojfpr fu;e 2006 d fu;e 6 ¼5½ d vulkj ,l vkonu i=k dk n- i-l- dh /kkjk 125 e iko/kkfur jhfr l fujkdr fd;k tk,xk ,o mlh jhfr l vkn'kk dk ikyu djk;k tk;xkA

iFke ox U;kf;d eftLVV ;k egkuxj eftLVV bl vf/kfu;e dh /kkjk 18 l ydj 22 rd d v/khu fuEufyf[kr vkn'k ikfjr dj ldrk g A

¼1½ /kkjk 18 d vrxr lj{k.k vkn'k(

¼2½ /kkjk 19 d vrxr fuokl vkn'k(

¼3½ /kkjk 20 d vrxr ekfnd vurk"k(

¼4½ /kkjk 21 d vrxr vfHkj{kk vkn'k(

¼5½ /kkjk 22 d vrxr ifrdj vkn'k rFkk(

¼6½ /kkjk 23 d vrxr vrfje ,o ,d i{kh; vkn'k(

eftLVV }kjk /kkjk 18 d vrxr lj{k.k vkn'k ;k /kkjk 23 d vrxr

vrfje ,o ,d i{kh; vkn'k ikfjr dju d i'pkr ;fn iR;Fkh mldk ikyu ugh djrk g rk 0;fFkr 0;fDr eftLVV] ifyl ;k lj{k.k vf/kdkjh dk ,l

Hkx dh f'kdk;r dj ldxk A eftLVV }kjk ,lh fLFkfr e iR;Fkh d fo:) vf/kfu;e dh /kkjk 31 d vrxr n.Muh; vijk/k d lc/k e fopkj.k dj dk;okgh dh tk ldrh g vkj ifyl dh fLFkfr e iR;Fkh d fo:) Mh-vkb-vkj- y[kc) dh tk ldrh g vkj lj{k.k vf/kdkjh dh fLFkfr e lj{k.k vf/kdkjh 0;fFkr 0;fDr dk cpku d fy; ifyl dh lgk;rk y ldrk g vkj 0;fFkr 0;fDr dh vkj l Mh- vkb- vkj- y[kc) djku e 0;fFkr 0;fDr dh enn dj ldrk g A

/kkjk 31 d vrxr vijk/k d fy; fdlh Hkh Hkkfr d 1 o"k rd d dkjkokl vFkok :i; 20]000@& rd d vFkn.M ;k nkuk n.MkKk, vf/kjkfir dh tk ldrh g A mDr vijk/k ;Fkk lHko mlh eftLVV }kjk fopkfjr gkuk vif{kr g ftld vkn'k dk dfFkr :i l Hkx fd;k g A

?kjy fglk l efgykvk dk lj{k.k vf/kfu;e d fu;e 15 d vulkj lj{k.k vkn'k Hkx dju dh f'kdk;r 0;fFkr 0;fDr eftLVV dk ;k ifyl dk ;k lj{k.k vf/kdkjh dk dj ldrk g ,o lj{k.k vf/kdkjh ,lh f'kdk;r lj{k.k vkn'k dk ifr d lkFk eftLVV dk Hktxk A mDr fu;e d vrxr lj{k.k vf/kdkjh 0;fFkr 0;fDr dk lgk;rk ;k ml cpku d fy; ifyl lgk;rk Hkh ikIr dj ldrk g A mDr fu;e d vulkj fdlh lj{k.k vkn'k ;k vrfje lj{k.k vkn'k dk Hkx gku ij mldh lpuk rRdky LFkkuh; vf/kdkfjrk j[ku oky vkj{kh dUn dk nh tkuk ,o ml ij vf/kfu;e dh /kkjk 31 rFkk 32 d v/khu ;Fkk micf/kr lK; vijk/k d :i e dk;okgh dh tkuk vif{kr g A

vf/kfu;e d vrxr fufer fu;e 2006 d fu;e 15 ¼9½ d vrxr ;g 0;oLFkk dh xb g fd vf/kfu;e d v/khu fxj¶rkjh fd; x; 0;fDr dk ifrHkfr ij eDr dju d le; U;k;ky; viu vkn'k e fuEukfdr fucU/ku Hkh vf/kjkfir dj ldrk g%&

¼d½ vfHk;Dr dk ?kjy fglk d fdlh dR; dkfjr dju dh /kedh nu ;k dju l vo:) dju dk dkb vkn'k(

¼[k½ vfHk;Dr dk 0;fFkr 0;fDr dk ij'kku dju] VyhQku dju ;k

dkb lid dju l jkdu dk dkb vkn'k(

¼x½ vfHk;Dr dk 0;fFkr 0;fDr d fuokl LFkku ij fdlh vU; LFkku ij] tgk mld tku dh lHkkouk gk] [kkyh dju ;k mll nj jgu dk dkb vkn'k(

¼?k½ dkb vXu; vL= ;k dkb vU; [krjukd gfFk;kj d dCt e j[ku ;k mi;kx dju l ifrf"k) dju dk dkb vkn'k(

¼M-½ ,Ydkgy ;k dkb vU; eknd vk"kf/k d mi;kx dk ifrf"k) dju dk dkb vkn'k(

¼N½ dkb vU; vkn'k tk 0;fFkr 0;fDr d lj{k.k] lj{kk vkj i;kIr vurk"k d fy; vif{kr gk A

bu lcd vfrfjDr ?kjy fglk l efgyk lj{k.k fu;e] 2006 d fu;e 15 ¼7½ e ;g mYy[k fd;k x;k g fd ;fn iR;Fkh }kjk ;k iR;Fkh dh vkj l dk; dju d fy; rkRif;r vU; 0;fDr }kjk bl vf/kfu;e d v/khu U;k;ky; d vkn'kk d iR;koru e dkb Hkh vojk/k dkfjr fd;k tkrk g rk bl 0;fFkr 0;fDr d ifr bl vf/kfu;e d v/khu fn; tku oky lj{k.k vkn'k ;k fdlh vrfje lj{k.k vkn'k dk Hkx le>k tkoxk A

vf/kfu;e dh /kkjk 19¼7½ d vulkj eftLVV lcf/kr vkj{kh dn d Hkkjlk/kd vf/kdkjh dk lj{k.k vkn'k d ioru e lgk;rk d fy; fun'k n ldxk A

/kkjk 19 d v/khu fuokl vkn'k nr le; eftLVV vkn'k d iHkkoh fd;kUo;u d fy; mle dkb vfrfjDr 'kr Hkh vf/kjkfir dj ldxk ;k vU; fun'k ikfjr dj ldxk tk mld er e 0;fFkr 0;fDr ;k mldh lrku dh lj{kk ;k lj{k.k inku dju d fy; ;fDr;Dr vko';d gk A eftLVV iR;Fkh d fo:) ?kjy fglk dkfjr dju l fuokfjr jgu d fy; ifrHkvk lfgr ;k jfgr c/ki= fu"ikfnr dju dk vkn'k n ldxk rFkk ,lk vkn'k n-i-l- d v/;k; VIII d v/khu gvk vkn'k le>k tk;xk vkj mlh vulkj dk;okgh dh tk;xhA bld vykok eftLVV bl vf/kfu;e d vulj.k e cuk; x; fu;ek

e fu;e 10 d v/khu lj{k.k vf/kdkjh dk fun'k n ldxk fd og ,lh lk>k

xgLFkh d fuokl ifjlj e fujh{k.k dju] iR;Fkh dh Lo; dh vkj iR;Fkh vkj 0;fFkr 0;fDr dh l;Dr vkfLr;k] miyfC/k;k] cd [kkrk d lc/k e ifronu U;k;ky; e iR;d llrkg iLrr dj rFkk U;k;ky; }kjk fn; x; vkn'kk d fu"iknu d lc/k e Hkh ifronu U;k;ky; d le{k iLrr dj A

/kkjk 19 dh mi/kkjk ¼1½ vFkok mi/kkjk ¼3½ d v/khu dkb vkn'k ikfjr dju ij U;k;ky; fudVLFk vkj{kh dn d iHkkjh dk vknf'kr dj ldxk fd og 0;fFkr 0;fDr dk lj{k.k inku dj vFkok ml vkn'k d fd;kUo;u e lgk;rk dj A

/kkjk 19 dh mi/kkjk ¼1½ d v/khu vkn'k nr le; eftLVV i{kdkjk dh foRrh; vko';drkvk vkj L=krk dk /;ku e j[kr g, iR;Fkh ij fdjk; lfgr vU; lnk;k d lc/k e ck/;rk, vf/kjkfir dj ldrk g A

/kkjk 20 d v/khu ikfjr ekfnd vurk"k d vkn'k dk ikyu lfuf'pr dju d fy; vf/kfu;e dh /kkjk 20 ¼6½ e iko/kku g fd ;fn iR;Fkh bl /kkjk d v/khu eftLVV }kjk fn; x; vkn'k d vulkj lnk; dju e foQy jgrk g rc eftLVV iR;Fkh d fu;ktd ;k nunkj dk iR;{k :i l etnfj;k ;k oruk d fdlh Hkkx dk ;k n; _.k dk ;k iR;Fkh d tek l iknHkr dk] 0;fFkr 0;fDr dk lnk; dju d fy; ;k U;k;ky; e fu{kfir dju d fy; funf'kr dj ldxk rFkk ml jkf'k dk iR;Fkh }kjk lnk; ekfnd vurk"k d ifr lek;kftr fd;k tk ldxk A bld vykok /kkjk 9 ¼1½ ¼t½ lj{k.k vf/kdkjh ij ;g dr0; vf/kjkfir djrh g fd og ;g lfuf'pr dj fd /kkjk 20 d v/khu fn;k x;k ekfnd vurk"k n.M ifd;k lfgrk] 1973 dh ifd;k ¼/kkjk 421 l 431 rd½ d vulkj vuikfyr o fu"ikfnr fd;k x;k gk A

eftLVV /kkjk 21 d v/khu fn; x; vfHkj{kk vkn'k dk fu"iknu lfuf'pr dju d fy; n.M ifd;k lfgrk dh /kkjk 97 d v/khu ryk'kh okjV tkjh djd] lrku d mifLFkr gku ij mldh vfHkj{kk 0;fFkr 0;fDr dk n

ldrk g] mld vfrfjDr fu;e 10 ¼1½¼?k½ e lj{k.k vf/kdkjh dk ;g dr0;

Hkh g fd og U;k;ky; d vkn'k dk iofrr djku e U;k;ky; dh lgk;rk vkj vko';d fujh{k.k dj ft ld fy; og ck/; Hkh g A

/kkjk 22 d v/khu ikfjr ifrdj vkn'k dk n.M ifd;k lfgrk dh /kkjk 431 dh lgk;rk l fu"ikfnr djok;k tk ldrk g A bl vf/kfu;e dh /kkjk 28 ;g mic/k djrh g fd /kkjk 18] 19] 20] 21] 22 ,o 23 d vrxr ifd;k vkj /kkjk 31 d v/khu vijk/k n.M ifd;k lfgrk] 1973 d mic/kk l vf/k'kkflr gkx vkj U;k;ky; vf/kfu;e dh /kkjk 12 ;k 23 ½2½ d vrxr iLrr vkonu i= d fujkdj.k d fy; Lo; dkb ifd;k Hkh fu/kkfjr dj ldrk g vkj n.M ifd;k lfgrk dh /kkjk 431 ;g mic/k djrh g fd n.M ifd;k lfgrk d v/khu fn; x; vkn'k d vk/kkj ij ln; /ku] ft ldh olyh dk <x vfHk0;Dr :i l micf/kr u gk] teku dh Hkkfr oly fd;k tk ldrk g A vr% iR;Fkh }kjk ifrdj vkn'k dk ikyu u dju ij /kkjk 431 n-i-l- dh lgk;rk yh tk ldrh g A

vf/kfu;e dh /kkjk 27 ½2½ ;g iko/kku djrh g fd bl vf/kfu;e d v/khu ikfjr dkb Hkh vkn'k leLr Hkkjr e ioruh; gkxk A ;gk ;g mYy[kuh; g fd /kkjk ¼1½ ½2½ d vulkj vf/kfu;e tEe d'ehj jkT; ij ykx ugh g A

;|fi ?kjy fglk l efgykvk dk lj{k.k fu;e] 2006 d fu;e 6 ¼5½ e iko/kku g fd bl vf/kfu;e e fn; x; vkn'kk dk ioru mlh jhfr e gkxk tk n-i-l- 1973 dh /kkjk 125 d v/khu vf/kdfFkr g] ijr ;FkkFk e ;g jhfr bl vf/kfu;e dh /kkjk 20 e fn; x; ekfnd vuRkk"k vkj /kkjk 22 e fn; x; ifrdj vkn'k dk fu"ikfnr dju e gh iHkkodkjh lkfcr gk ldrh g A

vf/kfu;e dh /kkjk 9 ¼1½ ¼d½ ;g mic/k djrh g fd lj{k.k vf/kdkjh dk ;g dr0; gkxk fd og eftLVV dk bl vf/kfu;e d v/khu dk; e lgk;rk inku dj rFkk /kkjk 9 ½2½ ;g mic/k djrh g fd lj{k.k vf/kdkjh

eftLVV d fu;=.k vkj i;o{k.k d v/khu gkxk vkj eftLVV ;k ljdkj }kjk

;k bl vf/kfu;e d v/khu lki x; dr0;k dk fu"ikfnr djxk A bl vf/kfu;e d mic/kk dk iHkko'kkyh :i l fd;kfUor dju d fy; cuk; x; ?kjy fglk l efgyk lj{k.k fu;e] 2006 d fu;e] 10 ¼2½ e ;g mic/k Hkh g fd lj{k.k vf/kdkjh mu dr0;k dk fuogu Hkh djxk tk bl vf/kfu;e vkj bld v/khu cuk; x; fu;ek dk iHkkoh dju d fy; eftLVV }kjk leunf'kr fd; tk; A blh idkj fu;e 10 ¼3½ e ;g mic/k Hkh g fd eftLVV ekeyk d vPN ic/ku d fy; viu vf/kdkfjrk d lj{k.k vf/kdkfj;k dk lk/kkj.k 0;ogkj l lcf/kr fun'k Hkh tkjh dj ldxk vkj lj{k.k vf/kdkjh mudk ijk dju d fy; ck/; gkxk A fu;e 10 ¼1½ ¼p½ e lj{k.k vf/kdkjh dk bl ckr d fy; vf/kdr fd;k x;k g fd og viu }kjk fd; tku oky dk;k e ifyl dh lgk;rk Hkh y ldrk g A bl idkj lj{k.k vf/kdkjh vf/kfu;e d v/khu eftLVV d }kjk /kkjk 18] 19 ,o 21 d v/khu vkn'kk dk fu"iknu djoku e vge Hkfedk fuHkk ldrk g d;kfd og eftLVV d fun'k ,o vkn'k ekuu d fy; vf/kfu;e d mDr mic/kk }kjk ck/; g] vr% eftLVV dk pkfg; fd og /kkjk 18] 19 ,o 21 d v/khu vkn'k ikfjr djr le; mlh vkn'k e lj{k.k vf/kdkjh dk Hkh ;g vknf'kr dj fd og 0;fFkr 0;fDr dk vkn'k }kjk nh xb lgk;rk ;k vurk"k dk fu"iknu gk tkuk lfuf'pr dj] eftLVV ;g Hkh vknf'kr dj ldrk g fd lj{k.k vf/kdkjh ifyl dh lgk;rk y vkj efgyk ifyl deh d lkFk ifr llrkg 0;fFkr 0;fDr l lid dj vkj 0;fFkr 0;fDr dh oLrfLFkfr vkj mld i{k e fn; x; vkn'kk d fu"iknu d lc/k e ifronu iLrr dj A

blh idkj vf/kfu;e d iHkkoh ioru d fy; vf/kfu;e dh /kkjk 33 d vrxr lj{k.k vf/kdkjh }kjk fcuk i;klr dkj.k d lj{k.k vkn'k e eftLVV }kjk funf'kr dr0; dk fuogu u dju ij 'kkfLr vf/kjkfir dju dk iko/kku Hkh fd;k x;k g A

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?kjyw fglk l efgykvk dk lj{k.k vf/kfu;e] 2005 dh /kkjk 26 dk foLrkj

?kjy fglk l efgykvk dk lj{k.k vf/kfu;e] 2005] tk fnukd 26-10-2006 l iHkko'khy gvk rFkk ftl v= lk'pkr doy ^vf/kfu;e^ dgk tk;xk] ?kjy fglk l ihfMr efgykvk dk Rofjr ,o iHkko'kkyh mipkj miyC/k djku d mnn'; l vf/kfu;fer fd;k x;k gA ^vf/kfu;e^ d vrxr ?kjy fglk] ftldk foLrkj d lkFk ^vf/kfu;e^ dh /kkjk 3 e ifjHkkf"kr fd;k x;k g] l ihfMr efgyk ;k lj{k.k vf/kdkjh ;k dkb vU; 0;fDr ^vf/kfu;e^ dh /kkjk 12 d vrxr l{ke eftLVV d le{k vkonu lk= iLrr dj ^vf/kfu;e^ dh /kkjk 18 l 22 e ikof/kr fofHkUu idkj d vurk"k ikIr dj ldrk g] tk lj{k.k vkn'k ¼/kkjk&18½] fuokl vkn'k ¼/kkjk&19½] ekfnd vkn'k ¼/kkjk&20½] vfHkj{kk vkn'k ¼/kkjk&21½ rFkk ifrdj vkn'k ¼/kkjk&22½ dh idfr d gk ldr gA ^vf/kfu;e^ dh /kkjk 27 ;FkkfLFkfr eftLVV d U;k;ky; dk mDr Lo:lk d vkn'k ikfjr dju dh vf/kdkfjrk inku djrh gA ^vf/kfu;e^ dh /kkjk 36 Hkh bl Øe e lnHk ;kX; g] tk ;g dgrh g fd ^vf/kfu;e^ d iko/kku rRle; ioRr vU; fdlh fof/k d iko/kkuk d vfrfjDr Lo:lk d g] ftldk vFk ;g gvk fd ;fn iokDr idfr dk dkb vurk"k io e ioRr ;k i'pkrorh vf/kfu;fer fdlh fof/k d vrxr fdlh vU; Qkje l ikIr fd;k tk ldrk g rk bl gr ,l Qkje d le{k dk;okgh dh tk ldxhA

^vf/kfu;e^ dh /kkjk 26 ikof/kr djrh g fd /kkjk 18 l 22 d vrxr miyC/k vurk"k ihfMr lk{k vkj mRrjnkrk dk iHkkfor dju okyh fdlh vU; fof/kd dk;okgh e flfoy U;k;ky;] dVEc U;k;ky; ;k n.M U;k;ky; }kjk Hkh inku fd; tk ldxA pkg ,lh dk;okgh ^vf/kfu;e^ d ioRr gku d io e ikjEHk g;h gk vFkok i'pkr eA mDr /kkjk eyr% fuEuor g%&

/kkjk & 26 %& vU; nkoa vkj fof/kd dk;okfg;k e vurk"k@lgk;rk%&

¼1½ dkb lgk;rk tk /kkjkvk 18] 19] 20] 21 rFkk 22 e miyC/k g ml flfoy U;k;ky;] dVEc@ifjokj U;k;ky; vFkok nkf.Md

U;k;ky; d le{k 0;fFkr 0;fDr vkj fjLikUMUV dk iHkkfor dju okyh fdlh fof/kd dk;okgh e Hkh pkgk tk ldxk pkg ,lh dk;okgh bl vf/kfu;e d ikjEHk gku d io ;k i'pkr lfLFkr dh x;h gkA

¼2½ mi/kkjk ¼1½ e fufn"V dkb lgk;rk ,lh fdlh vU; lgk;rk d vfrfjDr vkj lkFk e pkgk tk ldxk tk 0;fFkr 0;fDr flfoy ;k nkf.Md U;k;ky; d le{k ,l okn ;k fof/kd dk;okgh e pkgA

¼3½ ml n'kk e tc dkb lgk;rk 0;fFkr 0;fDr }kjk fdlh dk;okgh e bl vf/kfu;e d v/khu dk;okgh l vyx ikIr dj yh x;h gk rk og ¼L=h@efgyk½ ck/; gkxh fd og eftLVV dk ,lh lgk;rk feyu d ckj e lfpr djA

/kkjk 26 d ifj'khyu l igyh nf"V e ;g idV gkrk g fd mldh Hkk"kk ljy vFkck/k ;Dr ugh gA fo'k"kr% okD;k'k ^fdlh Hkh fof/kd dk;okgh e^ dk vFk cgr vf/kd Li"V ugh gA ,lh fLFkfr e vud i'u bl /kkjk dh i;kT;rk] ifjf/k ,o foLrkj d fo"k; e mRiUu gkr gA tl fd D;k flfoy U;k;ky; d le{k ifr&iRuh d e/; lfonk d fofufn"V vuikyu gr yfcr okn e /kkjk 18 l 22 e ikof/kr idfr d vurk"k inku fd; tk ldr g\ ;g i'u Hkh mBrk g fd D;k flfoy U;k;ky;] dVEc U;k;ky; ;k n.M U;k;ky; /kkjk 26 d vrxr vf/kdkfjrk dk i;kx dju l bl vk/kkj ij bdkj dj ldrk g fd /kkjk 12 d vrxr l{ke eftLVV d U;k;ky; e mipkj miyC/k gA lkFk gh lkFk ;g i'u Hkh mBrk g fd tgk ihfMr 0;fDr u eftLVV d le{k mipkj gr /kkjk 12 d vrxr vkonu lk= fn;k g ,o mUgh lk{kdkjk d e/; dVEc U;k;ky; ;k flfoy U;k;ky; e dk;okfg;k yfcr g rk

D;k ml n'kk e ifr dh ;g nyhy Lohdk; gkxh fd nkuk ekey ,d gh U;k;ky; e pyk; tk;A

^vf/kfu;e^ dh /kkjk 12 d vrxr dk;okgh lfLFkr dj ^vf/kfu;e^ dh /kkjk 18 l 22 d vrxr ikof/kr vurk"k /kkjk 27 d vrxr l{ke eftLVV d }kjk fn; tku d fy, ;g vko';d g fd tk 0;fDr vurk"k dh ekx dj jgk g og ^vf/kfu;e^ dh /kkjk 2 ¼a½ d vrxr ihfMr 0;fDr dh ifjHkk"kk l vkoRr gkrk gk] lkFk gh ftl 0;fDr d fo:) vurk"k pkgk tk jgk g] og 0;fDr ^vf/kfu;e^ dh /kkjk 2 ¼q½ d vrxr mRrjnkrk dh ifjf/k e vkrk gkA

0;fFkr 0;fDr %&

^vf/kfu;e^ dh /kkjk&2 mi/kkjk&¼a½ d vrxr ihfMr 0;fDr dh ifjHkk"kk e ,lh efgyk dk 'kkfey fd;k x;k g] tk fdlh le; ij mRrjnkrk d lkFk ikfjokfjd lc/k ¼Domestic Reletionship½ e Fkh rFkk tk ;g vk{ki yxk jgh g fd mld ifr mRrjnkrk d }kjk ?kjy fglk dh x;h gA

bl idkj] bl vf/kfu;e 2005 e 0;fFkr 0;fDr dk 0;kid Lo:Ik inku fd;k x;k g] ble u doy iRuh cfYd ml efgyk dk Hkh vPNkfnr fd;k x;k g] tk ml i:"k dh ;ku Hkkxhnkj g] pkg og mldh o/k iRuh gk ;k ugh] i=h] ekrk] cgu] fo/kok lc/kh vkj ?kj e fuokl dju okyh dkbZ Hkh efgyk tk fdlh rjg l iR;Fkh l lcf/kr gA

iR;Fkh 0;fDr%&

iR;Fkh dk vf/kfu;e 2005 dh /kkjk 2 ¼q½ e of.kr fd;k x;k g& ^^iR;Fkh l vfHkir dkbZ Hkh 0k;Ld i:"k g] tk 0;fFkr 0;fDr d lkFk ?kjy ukrk j[krk g ;k ?kjy ukrnkjh e jgk g vkj mld fo:) 0;fFkr] bl vf/kfu;e d v/khu fdlh vurk"k dh blIk dj pdk g^^A ijr 0;fFkr iRuh ;k

fookg dh idfr okyh ukrnkjh e jgu okyh L=h] ifr ;k i:"k Hkkxhnkj d] ukrnkj d fo:) Hkh f'kdk;r nkf[ky dj ldxhA

vr% mDr ifjHkk"kk l Li"V g fd ?kjy fglk l efgykvk dk lj{k.k vf/kfu;e 2005 d v/khu fn; x; vurk"kk dh ;kpuk 0k;Ld i:"k

lnL; d fo:) gh dh tk ldrh gA bl lc/k e ekuuh; mPp U;k;ky; d U;k; n"Vkr *^^vt;dkr 'kekl o vU; fo:) Jherh vYdk 'kekl 2008 ¼1½ t-,y-t- 393 ¾ 2008 ¼2½ Økbie 235* e ;g fl)kr ifrikfnr fd;k x;k g fd vf/kfu;e 2005 d v/khu ,d ;k ,d l vf/kd vurk"k dh ;kpuk 0k;Ld i:"k d fo:) gh dh tk ldrh g] rFkk bl lc/k e ekuuh; mPp U;k;ky;] e-i- }kjk ,d vU; U;k; n"Vkr *& ^^rgehuk dlj'kh fo:) 'kkft;k dlj'kh 2010 ¼1½ ,e-ih-,p-Vh- 133* e ;g fl)kr ifrikfnr fd;k x;k g fd /kkjk 19 dh mi/kkjk 01 ¼k½ d v/khu dkb Hkh vkn'k fdlh efgyk d fo:) ikfjr ugh fd;k tk;xkA

vr% mDr U;k;n"Vkrk l Li"V g fd ?kjy ukrnkjh e 0k;Ld lk:"k d lkFk jg jgh dkb Hkh L=h] tk fd 0;fFkr 0;fDr gkxh] rFkk og 0k;Ld i:"k] tk fd ?kjy ukrnkjh e ml L=h d lkFk jgk g] ;k jg pdk g] iR;Fkh gkxkA

vr% ^vf/kfu;e^ dh /kkjk 26 d vUrxr vf/kdkfjrk dk i;kx dju d fy; mDr fLFkfr;k dk LFkkfir fd;k tkuk vko';d gkxkA mDr ifji{; e flfoy U;k;ky;] dVEc U;k;ky; ;k n.M U;k;ky; d le{k ihfMr lk{k ;k mRrjnkrk d e/; yfcr fof/kd dk;okgh e ;fn ^vf/kfu;e^ dh /kkjk 18 l 22 d vrxr ikof/kr ,d ;k vf/kd vurk"kk dh ;kpuk dh tkrh g rk ;g LFkkfir fd;k tkuk vko';d gkxk fd ,d lk{k ihfMr 0;fDr ;k nljk lk{k mRrjnkrk dh ifjHkk"kk l vkoRr gkrk gA

/kkjk 26 dh ifjf/k vkj foLrkj d fo"k; e U;k; n"Vkr *uhr/ fl/g fo:) l/uhy fl/g]* ***A.I.R. 2008 Chh.-1 (D.B.)*** e fof/kd fLFkfr dk

fo'y"k.k djr g; ;g ifrikfnr fd;k x;k g fd /kkjk 26 bl mnn'; l ^vf/kfu;e^ e j[kh x;h g fd /kkjk 12 d iko/kkuk d ckotn ^vf/kfu;e^ dh /kkjk 18 l 22 e ikof/kr vurk"k flfoy U;k;ky;] dVEc U;k;ky; ;k n.M न्यायालय के द्वारा उस दशा में प्रदान किये जा सकेंगे जबकि पीड़ित पक्ष तथा mRrjnkrk d e/; ,l U;k;ky; e fof/kd dk;okfg;k yfcr g] vFkkr ;g

fodYi /kkjk 26 dh 'kCnkoyh d ifji{; e ihfMr lk{k dk miyC/k gkxk] D;kfd vurk"k dh ;kpuk ihfMr lk{k d }kjk gh dh tkuh gA vr% ihfMr lk{k d fy; ;g fodYi miyC/k g fd og ;k rk ^vf/kfu;e^ d vrxr /kkjk 27 e ikof/kr l{ke eftLVV d le{k vurk"k dh ;kpuk dj vFkok ,l flfoy U;k;ky;] dVEc U;k;ky; ;k n.M U;k;ky; l] ftld le{k fd mu nkuk lk{kk d e/; fof/kd dk;okgh yfcr g rFkk bl gr o ihfMr lk{k rFkk mRrjnkrk dh ifjf/k e vkr gA

uhr/ fl/g ¼iokDr½ d ekey e iRuh d }kjk ^vf/kfu;e^ dh /kkjk 12 d vrxr fookg lekjkg d vk;ktu e 0;; g;h jkf'k rFkk fookg e fn; x; ngt vkfn dh olyh d fy; dVEc U;k;ky; d le{k ;kfpdk iLrr dh x;h Fkh] ftl dVEc U;k;ky; u bl vk/kkj ij vLohdr dj fn;k fd ;kfpdk /kkjk 26 d vrxr ugh gA bl Øe e mPp U;k;ky; d }kjk ;g vfHkfu/kkfjr fd;k x;k fd ;fn dVEc U;k;ky; l vurk"k ikIr fd;k tkuk g rk vkonu lk= ^vf/kfu;e^ dh /kkjk 26 d vrxr fn;k tkuk pkfg;] D;kfd /kkjk 12 d vrxr vkonu lk= l{ke eftLVV d le{k gh iLrr fd;k tk ldrk gA

U;k; n"Vkr *jktd/ekj jkeiky ik.M/ fo:) lfjrk jktd/ekj ik.M/ ¼e/Ecb½ mPp U;k;ky; fjV fiVh'ku Ø- 5730@08 fu.k;; fnukd 26-08-2008* e Hkh vf/kfu;e dh /kkjk 26 dk fuopu fd;k x;kA bl ekey e ;g 0;oLFkk dh xb fd /kkjk 26 d vrxr flfoy U;k;ky;] dVEc U;k;ky; ;k n.M U;k;ky; o lkj vurk"k inku dj ldr g] tk /kkjk 18 l 22 e ikof/kr fd; x; gA

U;k; n"Vkr *l/t; 'kekZ ¼nkf.Md iqujh{k.k Ø- 3700@09 vkn/'k fnukd 15-07-10 dkydkrk mPp U;k;ky;½* d ekey e iRuh d }kjk ifjokj U;k;ky; d le{k n.M ifØ;k lfgrk dh /kkjk 125 d vrxr Hkj.k&ik"k.k gr vkonu lk= iLrr fd;k x;k FkkA bl dk;okgh d yfcr jgu d nkjku iRuh }kjk ^vf/kfu;e^ dh /kkjk 12 d vrxr U;kf;d eftLVV iFke J.kh d le{k Hkj.k&ik"k.k fnyk; tku d fy; vkonu lk= iLrr fd;kA ifr

d }kjk bl vkonu dk fojk/k bl vk/kkj ij fd;k x;k fd Hkj.k&ik"k.k d ckj e io l gh dVEc U;k;ky; d le{k dk;okgh yfcr g vr% eftLVV d le{k Hkj.k&ik"k.k ;kfpdk l/kkj.kh; ugh g] yfdu U;k;ky; u bl rd dk Lohdkj ugh fd;k FkA ;g er idV fd;k fd ^vf/kfu;e^ d iko/kku vuijd Lo:Ik d g rFkk io l ioRr fdlh fof/k d vrxr vurk"k ikIr dju d vf/kdkj dk iHkkfor ugh djr gA

U;k; n"Vkr *Mfu'ku ikyjkt vkfn fo:) Jherh ek;k foukyk ¼nkf.Md ;kfpdk Ø- 7156@07 vkn/'k fnukd 02-04-2008] pUub/ mPp U;k;ky;½* d ekey e ifr d }kjk U;kf;d lkFkDdj.k d fy; dVEc U;k;ky; d le{k ;kfpdk iLrr dh x;h FkhA mDr ekey e iRuh dk dfFkr :Ik l nh tk jgh /kefd;k d lc/k e mlu lj{k.k vkn'k d fy; l{ke eftLVV d U;k;ky; e ;kfpdk iLrr dh] ftldk fojk/k bl vk/kkj ij fd;k x;k fd ;g fof/kd ifØ;k dk n:Ik;kx g] D;kfd io l gh fookg lkFkDdj.k d fy; dVEc U;k;ky; e ekeyk yfcr g vr% mDr ;kfpdk dVEc U;k;ky; dk vrfjr dj nh tk;A pUub mPp U;k;ky; d }kjk mDr nyhyk dk vLohdkj djr g; ;g Bgjk;k x;k fd ^vf/kfu;e^ dh /kkjk 26 ihfMr 0;fDr dk ;g foodkf/kdkj nrh g fd og /kkjk 18 l 22 d vrxr ikof/kr vurk"k ;k rk lcf/kr l{ke eftLVV d U;k;ky; l ikIr dj vFkok fof/kd dk;okfg;k yfcr gku dh n'kk e dVEc U;k;ky; ;k n.M U;k;ky; l ,lk vurk"k ikIr dj] yfdu ihfMr 0;fDr ij ,lk dkb c/ku ugh g fd dVEc U;k;ky; ;k flfoy U;k;ky; e dk;okgh fopkjk/khu gku ij mDr vurk"k mlh

U;k;ky; e ;kfpr fd;k tk; vkj u gh ,h fLFkfr e l{ke eftLVV d le{k iLrr dh x;h ;kfpdk dk ifjokj dk vrfjr fd;k tk ldrk gA

^vf/kfu;e^ dh /kkjk 26 d foLrkj d lc/k e *,e- iykuh fo:) feuk{kh] A.I.R. 2008 Chennai 162* d ekey e Hkh fopkj fd;k x;k RkFkk ;g Bgjk;k x;k fd tgk /kkjk 12 dh ;kfpdk d fujkdj.k gr lcf/kr eftLVV के लिये यह आवश्यक होगा कि वह आदेश पारित करने से पहले संरक्षण अधिकारी

}kjk nh x;h Domestic Incident Report ij fopkj dj] ogh flfoy U;k;ky; ;k dVEc U;k;ky; d fy; ,lk dkb c/ku ugh gA bl ekey e fd;k x;k llxr ifriknu fuEuor g%&

> "Section 12 (1) contemplates an application before the Magistrate wherein the proviso to the Section makes it clear that before passing an order by the Magistrate, he shall take into consideration the domestic incident report received from the Protection officer. But however, no such proviso is enumerated U/S 26 of the said Act. If the intention of the legislature is that even if an application is filed before the Civil Court or family Court or a Criminal Court by the aggrieved person, an order shall be passed by them taking into consideration any domestic incident report received from the Protection Officer or the service provider, then the legislature would have incorporated such proviso as in the case of Section 12 (1), even in Section 26 also. Thus, a conjoint reading of both Sections 12 and 26 will make it clear that when a Magistrate passes an order, he shall receive the report from the protection officer but whereas such a report is not contemplated, when an order is passed by the Civil Court or by the Family Court."

mDr fo'y"k.k d idk'k e ;g fLFkfr mHkjdj lkeu vkrh g fd flfoy U;k;ky;] dVEc U;k;ky; ;k n.M U;k;ky;] ihfMr lk{k rFkk mRrjnkrk d e/; py jgh fof/kd dk;okgh e ^vf/kfu;e^ dh /kkjk 26 d vrxr ikFkuk fd; tku ij ,o bl gr vk/kkj nf'kr fd; tku ij ^vf/kfu;e^ dh /kkjk 18 l 22 d vrxr ikof/kr vurk"k inku dj ldr g] yfdu ,h vf/kdkfjrk

dk i;kx fd; tku d fy; ;g vko';d g fd tk lk{k vurk"k ikIr djuk pkgrk g] og ^vf/kfu;e^ dh /kkjk 2 ¼a½ d vrxr ihfMr lk{k dh ifjf/k e vkrk gk] tcfd ftl 0;fDr d fo:) vurk"k pkgk x;k g] og 0;fDr ^vf/kfu;e^ dh /kkjk 2¼q½ d vrxr mRrjnkrk dh ifjf/k e vkrk gkA

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?kjyw fgalk ls efgykvksa dk lj{k.k vf/kfu;e] 2005 dh /kkjk&29 ds **अधीन कौन से आदेश सत्र न्यायालय में अपील योग्य हैं**

?kjy fglk l efgykvk dk lj{k.k vf/kfu;e] 2005 dh /kkjk&29 llxr g tk fuEuor g&

> **"29. Appeal.** – There shall lie an appeal to the Court of Session within thirty days from the date on which **the order made by the Magistrate is served** on the aggrieved person or the respondent, as the case may be, whichever is later."

उक्त प्रावधान के अधीन आदेश के अपील योग्य होने की दो अप{kk, हैं– प्रथम यह कि आदेश मजिस्ट्रेट द्वारा पारित किया गया हो तथा द्वितीय वह इस v/;k; ,o bl /kkjk d io d iko/kkuk d v/khu ikfjr fd;k x;k gk tl fd bl iko/kku e 'kCn "Order" d io i;Dr 'kCn "the"" l Li"V gA

vf/kfu;e d v/;k; 4 dh /kkjk 18 l 23 d v/khu eftLVV विभिन्न प्रकार के आदेश पारित करने हेतु सक्षम है । धारा 26 के अधीन सिविल dVEc ;k nkf.Md U;k;ky; dk mud ;gk yfcr fdlh fof/kd dk;okgh e /kkjk&18 l 22 d v/khu nh tku okyh lgk;rk inku dju gr vf/kÑr fd;k x;k gA

अधिनियम के अधीन पारित किये जाने वाले आदेशों को तीन श्रेणियों e foHkkftr fd;k tk ldrk g &

(i) vf/kfu;e dh /kkjk&18 ls 22 ds v/khu ikfjr fd;s tkus okys **अंतिम आदेश** अर्थात् संरक्षण आदेश, निवास आदेश, आर्थिक अनुतोष अभिरक्षा आदेश तथा प्रतिकर आदेश।

(ii) vf/kfu;e dh /kkjk&23½2½ d v/khu ikfjr fd, tku oky ,d **पक्षीय अंतरिम आदेश** अर्थात् एक पक्षीय अंतरिम संरक्षण आदेश, एकपक्षीय अंतरिम निवास आदेश, एकपक्षीय अंतरिम आर्थिक अनुतोष तथा एकपक्षीय अंतरिम प्रतिकर आदेश।

(iii) vf/kfu;e dh /kkjk&23½1½ d v/khu ikfjr fd, tku oky vrfje **आदेश।**
/kkjk&23½1½ d v/khu eftLVV viu le{k dh fdlh dk;okgh e ,lk अंतरिम आदेश पारित कर सकता है जैसा वह न्यायसंगत तथा उचित le>rk gA

mi;Dr Jf.k;k e l tgk rd iFke J.kh vFkkr /kkjk&18 l 22 के अधीन पारित किए जाने वाले अंतिम आदेशों का संबंध है, इस बिंदु पर कोई विवाद नहीं है कि यह सभी आदेश अधिनियम की धारा–29 के अधीन अपील योग्य g A

tgk rd nljh J.kh vFkkr /kkjk&23½2½ d v/khu ikfjr fd; जाने वाले एक पक्षीय अंतरिम आदेशा का संबंध है, ऐसे आदेश चूंकि पक्षकारों के vf/kdkjk dk fopkj.k d fdlh fcn ij U;k;fu.khr ;k iHkkfor djr g अतएव ऐसे आदेश अधिनियम की धारा–29 के अधीन अपील योग्य होंगे।

tgk rd rhljh J.kh vFkkr /kkjk&23½1½ d v/khu ikfjr fd, tku oले अंतरिम आदेशों का संबंध है, यदि ऐसे आदेश पूर्णतः प्रक्रियात्मक हैं तो og vf/kfu;e dh /kkjk&29 d v/khu vihy ;kX; ugh gkxA vFkkr vkonu d प्रकथनों में संशोधन के आवेदन पर आदेश, स्थगन स्वीकार या अस्वीकार करने संबंधी आदेश, साक्षियों को आहूत करने हेतु समंस जारी करने का आदेश या अधिनियम के अधीन पारित आदेशों के निष्पादन हेतु पारित आदेश पूर्णतः प्रक्रियात्मक आदेश होने से धारा–29 के अधीन अपील योग्य नहीं होंगे।

;gk ;g Hkh mYy[k fd;k tkuk vif{kr g fd flfoy U;k;ky;] dVEc U;k;ky; ;k eftLVV d U;k;ky; l fHkUu fdlh nkf.Md U;k;ky; u अधिनियम की धारा–26 के अधीन कोई आदेश पारित किया है तो वह अधिनियम की धारा 29 के अधीन अपील योग्य नहीं होगा क्योंकि ऐसा आदेश मजिस्ट्रेट द्वारा ikfjr ugh fd;k x;k gA

bl lc/k e ***Abhijit Bhaikaseth Auti v. State of Maharashtra, 2009 Cri. L. J. 889*** (Bombay High Court) d U;k; n"Vkr e ifrikfnr fuEufyf[kr fof/k voykduh; g &

> "As held by the Apex Court in the case of ***Central Bank of India v. Gokul Chand, AIR 1976 SC 799 and Shankarlal Aggarwal v. Shankarlal Poddar, AIR 1965 SC 507*** an appeal under Section 29 will not be maintainable against the purely procedural orders such as orders on application for

> amendment of pleadings, orders refusing or granting adjournments, order issuing witness summons or orders passed for executing the orders passed under the said Act etc. My attention was also invited to Section 26 of the said Act. If relief under the provision of Sections 18 to 22 of the said Act is granted by a Civil Court or Family Court, an appeal will not lie under Section 29 in as much as an appeal under Section 29 will lie only against an order of the learned Magistrate.
>
> Thus, the conclusions which can be summarized are as under:
> (i) An appeal will lie under Section 29 of the said Act against the final order passed by the learned Magistrate under sub-section (1) of Section 12 of the said Act:
>
> (ii) *** *** ***
>
> (iii) An appeal will also lie against orders passed under sub-section (1) and sub-section (2) of the Section 23 of the said Act which are passed by the learned Magistrate. However, while dealing with an appeal against the order passed under Section 23 of the said Act, the Appellate Court will usually not interfere with the exercise of discretion by the learned magistrate. The appellate Court will interfere only if it is found that the discretion has been exercised arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant or refusal of interim relief.

(iv) An appeal under Section 29 will not be maintainable against purely procedural orders which do not decide or determine the rights and liabilities of the parties."

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PART-II

DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN

&

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN

(Resolution adopted by The General Assembly on the report of the Third Committee)

(A/48/629)

Resolution 48/104

The General Assembly,

Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,

Noting that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process,

Concerned that violence against women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward looking Strategies for the Advancement of Women, in which a set of measures to combat violence against women was recommended, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women,

Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women,

Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,

Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,

Recalling the conclusion in paragraph 23 of the annex to Economic and Social Council resolution 1990/15 of 24 May 1990 that the recognition that violence against women in the family and society was pervasive and cut across lines of income, class and culture had to be matched by urgent and effective steps to eliminate its incidence,

Recalling also Economic and Social Council resolution 1991/18 of 30 May 1991, in which the Council recommended the development of a framework for an international instrument that would address explicitly the issue of violence against women,

Welcoming the role that women's movements are playing in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women,

Alarmed that opportunities for women to achieve legal, social, political and economic equality in society are limited, *inter alia*, by continuing and endemic violence,

Convinced that in the light of the above there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women,

Solemnly proclaims the following Declaration on the Elimination of Violence against Women and urges that every effort be made so that it becomes generally known and respected:

Article 1

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, *inter alia*:

(a) The right to life; [1]
(b) The right to equality; [2]
(c) The right to liberty and security of person; [3]
(d) The right to equal protection under the law; [2]
(e) The right to be free from all forms of discrimination; [2]
(f) The right to the highest standard attainable of physical and mental health; [4]
(g) The right to just and favourable conditions of work; [5]
(h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment. [6]

Article 4

States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

(a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women or withdrawing reservations to that Convention;

(b) Refrain from engaging in violence against women;

(c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

(d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence; women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm that they have suffered; States should also inform women of their rights in seeking redress through such mechanisms;

(e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

(f) Develop, in a comprehensive way, preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

(g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as

rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

(h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

(i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

(j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

(k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress

violence against women; those statistics and findings of the research will be made public;

(l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

(m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;

(n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

(o) Recognize the important role of the women's movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;

(p) Facilitate and enhance the work of the women's movement and non-governmental organizations and cooperate with them at local, national and regional levels;
(q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

Article 5

The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present Declaration and, to this end, should, *inter alia*:

(a) Foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of violence against women;

(b) Promote meetings and seminars with the aim of creating and raising awareness among all persons of the issue of the elimination of violence against women;

(c) Foster coordination and exchange within the United Nations system between human rights treaty bodies to address the issue of violence against women effectively;

(d) Include in analyses prepared by organizations and bodies of the United Nations system of social trends and problems, such as the periodic reports on the world social situation, examination of trends in violence against women;

(e) Encourage coordination between organizations and bodies of the United Nations system to incorporate the issue of violence against women into ongoing programmes, especially with reference to groups of women particularly vulnerable to violence;

(f) Promote the formulation of guidelines or manuals relating to violence against women, taking into account the measures referred to in the present Declaration;

(g) Consider the issue of the elimination of violence against women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments;

(h) Cooperate with non-governmental organizations in addressing the issue of violence against women.

Article 6

Nothing in the present Declaration shall affect any provision that is more conducive to the elimination of violence against women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State.

Notes

1. Universal Declaration of Human Rights, article 3; and International Covenant on Civil and Political Rights, article 6.

2. International Covenant on Civil and Political Rights, article 26

3. Universal Declaration of Human Rights, article 3, and International Covenant on Civil and Political Rights, article 9

4. International Covenant on Economic, Social and Cultural Rights, article 12.

5. Universal Declaration of Human Rights, article 23 and International Covenant on Economic, Social, and Cultural Rights articles 6 and 7

6. Universal Declaration of Human Rights, article 5; International Covenant on Civil and Political Rights, article 2; and Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

85th plenary meeting 20 December 1993

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

"...the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields "

CONTENTS

INTRODUCTION

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations have agreed to be bound by its provisions.

The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women's rights. The Commission's work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elimination of

All Forms of Discrimination against Women is the central and most comprehensive document.

Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity, and worth of the human person, in the equal rights of men and women. The present document spells out the meaning of equality and how it can be achieved. In so doing, the Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.

In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made o.1 the basis of sex...in the political, economic, social, cultural, civil or any other field". The Convention gives positive affirmation to the principle of equality by requiring States parties to take "all

appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men"(article 3)

The agenda for equality is specified in fourteen subsequent articles. In its approach, the Convention covers three dimensions of the situation of women. Civil rights and the legal status of women are dealt with in great detail. In addition, and unlike other human rights treaties, the Convention is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.

The legal status of women receives the broadest attention. Concern over the basic rights of political participation has not diminished since the adoption of the Convention on the Political Rights of Women in 1952. Its provisions, therefore, are

restated in article 7 of the present document, whereby women are guaranteed the rights to vote, to hold public office and to exercise public functions. This includes equal rights for women to represent their countries at the international level (article 8). The Convention on the Nationality of Married Women - adopted in 1957 - is integrated under article 9 providing for the statehood of women, irrespective of their marital status. The Convention, thereby, draws attention to the fact that often women's legal status has been linked to marriage, making them dependent on their husband's nationality rather than individuals in their own right. Articles 10, 11 and 13, respectively, affirm women's rights to non-discrimination in education, employment and economic and social activities. These demands are given special emphasis with regard to the situation of rural women, whose particular struggles and vital economic contributions, as noted in article 14, warrant more attention in policy planning. Article 15 asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting women's legal capacity "shall be deemed null and void". Finally, in article 16, the Convention returns to the issue of marriage and family relations, asserting the equal rights and obligations of women and men with regard to choice of spouse, parenthood, personal rights and command over property.

Aside from civil rights issues, the Convention also devotes major attention to a most vital concern of women, namely their reproductive rights. The preamble sets the tone by stating that "the role of women in procreation should not be a basis for discrimination". The link between discrimination and women's reproductive role is a matter of recurrent concern in the Convention. For example, it advocates, in article 5, "a proper understanding of maternity as a social function", demanding fully shared responsibility for child-rearing by both sexes. Accordingly, provisions for maternity protection and child-care are proclaimed as essential rights and are incorporated into all areas of the Convention, whether dealing with employment, family law, health core or education. Society's obligation extends to offering social services, especially child-care facilities, that allow individuals to combine family responsibilities with work and participation in public life. Special measures for maternity protection are recommended and "shall not be considered discriminatory". (article 4). "The Convention also affirms women's right to reproductive choice. Notably, it is the only

human rights treaty to mention family planning. States parties are obliged to include advice on family planning in the education process (article l O.h) and to develop family codes that guarantee women's rights "to decide freely and responsibly on the number and spacing of their children and to hove access to the information, education and means to enable them to exercise these rights" (article 16.e).

The third general thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. Noting this interrelationship, the preamble of the Convention stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women". States parties are therefore obliged to work towards the modification of social and cultural patterns of individual conduct in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for

men and women" (article 5). And Article 1O.c. mandates the revision of textbooks, school programmes and teaching methods with a view to eliminating stereotyped concepts in the field of education. Finally, cultural patterns which define the public realm as a man's world and the domestic sphere as women's domain are strongly targeted in all of the Convention's provisions that affirm the equal responsibilities of both sexes in family life and their equal rights with regard to education and employment. Altogether, the Convention provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex.

The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). The Committee's mandate and the administration of the treaty are defined in the Articles 17 to 30 of the Convention. The Committee is composed of 23 experts nominated by their Governments and elected by the States parties as individuals "of high moral standing

and competence in the field covered by the Convention".

At least every four years, the States parties are expected to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the Convention. During its annual session, the Committee members discuss these reports with the Government representatives and explore with them areas for further action by the specific country. The Committee also makes general recommendations to the States parties on matters concerning the elimination of discrimination against women.

The full text of the Convention is set out herein

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human

beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and

women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and

women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the

measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article I

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure

the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particulary those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-

being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
(b) To introduce maternity leave with pay or with comparable social benefits without

loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of

any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two

members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative,

judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

(amendment, status of ratification)

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention

as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present

Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

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PART-III

RELEVANT CONSTITUTIONAL & LEGAL PROVISIONS

RELEVANT CONSTITUTIONAL AND LEGAL PROVISIONS

CONSTITUTION OF INDIA

Article 14. Equality before law:-

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and place of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

(5) *Nothing in this Article or in sub-clause (g) or clause (1) of Article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially or educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.*

2

Article 16. Equality of opportunity in matters of public employment.

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointments to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office *under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory,* prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any

backward class or citizens which, in the opinion of the State, is not adequately represented in the services under the State.

(4-A) *Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State*.

(4-B) *Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4-A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of vacancies of that year.*

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

DIRECTIVE PRINCIPLES OF STATE POLICY

Article 39. Certain principles of policy to be followed by the State. —

The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 42. Provision for just and humane conditions of work and maternity relief.

The State shall make provision for securing just and humane conditions of work and for maternity relief.

Prison reform. —The benefit of this provision may be extended to prisoners and made the basis for prison reform.

Maternity benefit. —The provision in the Maternity Benefit Act, 1961 entitling maternity leave to women engaged on casual basis or on muster roll basis on daily wages and not only to those regular employment, are wholly in consonance with the Article 42.

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FUNDAMENTAL DUTIES

51 A. Fundamental Duties — It shall be the duty of every citizen of India –

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem,

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional

or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years

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THE DOWRY PROHIBITION ACT, 1961

(Act No. 28 of 1961)

(20th May, 1961)

An Act to prohibit the giving or taking of dowry

Be it enacted by Parliament in the Twelfth Year of the Republic of India as follows:

1. Short title, extent and commencement. – (1) This Act may be called the Dowry Prohibition Act, 1961.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

**2. Definition of `dowry'**. – In this act, `dowry' means any property or valuable security given or agreed to be given either directly or indirectly–

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

3. Penalty for giving or taking dowry. – (1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than five years.

(2) Nothing in sub–section (1) shall apply to or, in relation to, –

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in list maintained in accordance with rule made under this Act;

(b) presents which are given at the time of marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with rules made under this Act;

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

4. Penalty for demanding dowry.– If any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom as the case may be, any dowry, he shall be punishable with

imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

4A. Ban on advertisement.– If any person–

(a) offers, through any advertisement in any newspaper, periodical, journal or through any other media any share in his property or of any money or both as a share in any business or other interest as consideration for the marriage of his son or daughter or any other relative,

(b) prints or publishes or circulates any advertisement referred to Cl. (a), he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years , or with fine which may extend to fifteen thousand rupees:

Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than six months.

5. Agreement for giving or taking dowry to be void.– Any agreement for the giving or taking of dowry shall be void.

6. Dowry to be for the benefit of the wife or heirs.– (1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman –

(a) if the dowry was received before marriage, within three months after the date of marriage; or

(b) if the dowry was received at the time of or after the marriage within three months after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within three months after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman.

(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor or as required by sub-section (3), he shall be punishable with imprisonment for a term which shall

not be less than six months, but which may extend two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees or with both.

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall–

(a) if she has no children, be transferred to her parents, or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.

(3A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1)or sub-section (3) has not, before his conviction under that sub-section, transferred such property to the women entitled thereto or, as the case may be, her heirs, parents or children, the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman, or as the case may be, her heirs, parents or children within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman, as the case may be, her heirs, parents or children.

(4) Nothing contained in this section shall affect provisions of Sec. 3 or Sec. 4.

7. Cognizance of offences.– (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2of 1974),–

(a) no Court inferior to that of a Metropolitan magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b) no Court shall take cognizance of an offence under this Act except upon –

(i) its own knowledge or a police report of the facts which constitute such offence, or

(ii) a complaint by the person aggrieved by offence or a parent or other relative of such person, or by any recognized welfare institution or organization:

(c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorized by this Act on any person convicted of any offence under this Act.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2of 1974), shall apply to any offence punishable under this Act.)

Notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act.

8. Offences to be cognizable for certain purposes and to be non-bailable and non-compoundable.– (1) The Code of Criminal Procedure, 1973 (2 of 1974) shall apply to offences under this Act as of they were cognizable offences–

(a) for the purpose of investigation of such offences; and

(b) for the purpose of matters other than–

(i) matters referred to in Sec. 42 of that Code, and

(ii) the arrest of person without a warrant or without an order of a Magistrate.

(2) Every offence under this Act shall be non–bailable and non–compoundable.

8A. Burden of proof in certain cases.– Where any person is prosecuted for taking or abetting the taking of any dowry under Sec. 3, or the demanding of dowry under Sec.4, the burden of proving that he had not committed an offence under those sections shall be on him.

8B. Dowry Prohibition Officers.–(1) The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act.

(2) Every Dowry Prohibition Officer shall exercise and perform the following powers and functions, namely, –

(a) to see that the provisions of this Act are complied with;

(b) to prevent, as far as possible, the taking or abetting the taking of, of the demanding of, dowry;

(c) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and

(d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

(3) The State Government may, by notification in the official Gazette, confer such powers of a police officer as may be specified in the notification, the Dowry Prohibition Officer who shall exercise such powers subject to such limitations and conditions as may be specified by rules made under this Act.

(4) The State Government may, for the purpose of advising and assisting the Dowry Prohibition Officers in the efficient performance of their functions under this Act, appoint an advisory board consisting of not more than five social welfare workers (out of whom at least two shall be women) from the area in respect of which such Dowry Prohibition Officer exercises jurisdiction under sub–section (1).

9. Power to make rules.– (1) The Central Government may, by notification in the official Gazettee, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for–

(a) the form and manner in which, and the persons by whom, any list of presents referred to in sub–section (2) of Sec. 3 shall be maintained and all other matters connected therewith; and

(b) the better co–ordination of policy and action with respect to the administration of this Act.

(3) Every rules made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should

not be made, the rule shall thereafter have effect only in such modified form or be; of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

10. Power of the State Government to make rules.– The State Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the additional functions to be performed by the Dowry Prohibition Officers under sub–section(2) of Sec. 8–B;

(b) limitations and conditions subject to which a Dowry Prohibition Officer may exercise his functions under sub–section (3) of Sec. 8–B.

(3) Every rule made by the State Government under this section shall be laid as soon as may be after it is made before the State Legislature.

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Notification No. F-10-9-2003-L-2 dated the 8th July, 2003. – In exercise of the powers conferred by sub-section (1) of Section 8-B of the **Dowry Prohibition Act, 1961 (No. 28 of 1961),** and in supersession of this Department Notifications Nos. 866-Legal-89, dated the 19th April 1989, published in "Madhya Pradesh Gazette" dated the 5th May 1989 and F-10-14-98-L-2, dated the 22nd July 1999, the State Government hereby appoints all the Executive Officers of Janpad Panchayats as Dowry Prohibition Officers within their respective areas for the purpose of the said Act.

[Published in M.P. Rajpatra (Asadharan) dated 08-07-2003 page 760]

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THE DOWRY PROHIBITION (MAINTENANCE OF LISTS OF PRESENTS TO THE BRIDE AND BRIDEGROOM) RULES, 1985

G.S.R. 664 (E), dated 19th August, 1985.– In exercise of the powers conferred by Sec.9 of the Dowry Prohibition Act, 1961 (28 of 1961), the Central Government hereby makes the following rules, namely:

1. Short title and commencement.–(1) These rules may be called the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985.

(2) They shall come into force on the 2nd day of October, 1985, being the date appointed for the coming into force of the Dowry Prohibition (Amendment) Act, 1984 (63 of 1984).

2. Rules in accordance with which lists of presents are to be maintained.–(1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2) The list of present which are given at the time of the marriage to the bridegroom shall be maintained by the bridegroom.

Every list of presents referred to in sub–rule (1) or sub–rule (2),–

(a) shall be prepared at the time of the marriage or as soon as possible after the marriage:

(b) shall be in writing;

(c) shall contain,–

(i) a brief description of each present;

(ii) the approximate value of the present;

(iii) the name of the person who has given the present; and

(iv) where the person giving the present is related to the bride or bridegroom, a description of such relationship;

(d) shall be signed by both the bride and the bridegroom.

(4) The bride or the bridegroom may, if she or he so desires, obtain on either or both of the lists referred to in sub–rule (1) or sub–rule (2) the signature or signatures of any relations of the bride or the bridegroom or of any other person or persons present at the time of the marriage.

THE CODE OF CRIMINAL PROCEDURE, 1973

97. Search for persons wrongfully confined. — If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue, a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before

a Magistrate, who shall make such order as in the circumstances of the case seems proper.

122. Imprisonment in default of security. — (1) (a) If any person ordered to give security under section 106 or section 117 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the court or Magistrate who made the order requiring it.

(b) If any person after having executed a bond, with or without sureties for keeping the peace in pursuance of an order of a Magistrate under section 117, is proved, to the satisfaction of such Magistrate or his successor-in-office, to have committed breach of the bond, such Magistrate or successor- in-office may after recording, the grounds of such proof, order that the person be arrested and detained in prison until the expiry of the period of the bond and such order shall be without prejudice to any other punishment or forfeiture to which the said person may be liable in accordance with law.

(2) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security, is aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Sessions Judge and the proceedings shall be laid, as soon as conveniently may be, before such court.

(3) Such court, after examining such proceedings and requiring from the Magistrate any further information or evidence which it thinks necessary, and after giving the concerned person a reasonable opportunity of being heard, may pass such order on the case as it thinks fit:

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

(4) If security has been required in the course of the same proceeding, from two of more persons in respect of any one of whom the proceedings are referred to the Sessions Jude under Sub-section (2), such reference shall also include the case of any other of such person who has been ordered to give security,

and the provisions of subsections (2) and (3), shall in that event, apply to the case of such other person also, except that the period (if any) for which he may be imprisoned, shall not exceed the period for which he was ordered to give security.

(5) A Sessions Judge may in his discretion transfer any proceedings, laid before him under sub-section (2) or sub-section (4) to an Additional Sessions Judge or Assistant Sessions Judge and upon such transfer, such Additional Sessions Judge or Assistant Sessions Judge may exercise the powers of a Sessions Judge under this section in respect of such proceedings.

(6) If the security is tendered to the officer in charge of the jail, he shall forthwith refer the matter to the court or Magistrate who made the order, and shall await the orders of such court or Magistrate.

(7) Imprisonment for failure to give security for keeping the peace shall be simple.

(8) Imprisonment for failure to give security for good behaviour shall, where the proceedings have been taken under section 108, be simple and, where the proceedings have been taken under section 109 or section 110, be rigorous or simple as the court or Magistrate in each case directs.

123. Power to release persons imprisoned for failing to give security. —

(1) Whenever the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case is of opinion that any person imprisoned for failing to give security under this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged.

(2) Whenever any person has been imprisoned for failing to give security under this Chapter, the High Court or Court of Session, or where the order was made by any other court, the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case, may make an order reducing the amount

of the security or the number of sureties or the time for which security has been required.

(3) An order under sub-section (1) may direct the discharge of such person either without conditions or upon any conditions which such person accepts:

Provided that any condition imposed shall cease to be operative when the period for which such person was ordered to give security has expired.

(4) The State Government may prescribe the conditions upon which a conditional discharge may be made.

(5) If any condition upon which any person has been discharged is, in the opinion of the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117 or Chief Judicial Magistrate in any other case, by whom the order of discharge was made or of his successor, not fulfilled, he may cancel the same.

(6) When a conditional order of discharge has been cancelled under sub-section (5), such person may be arrested by any police officer without warrant, and shall thereupon be produced before the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case.

(7) Unless such person gives security in accordance with the terms of the original order for the un-expired portion of the term for which he was in the first instance committed or ordered to be detained (such portion being deemed to be a period equal to the period between the date of the breach of the conditions of discharge and the date on which, except for such conditional discharge, he would have been entitled to release), the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or

the Chief Judicial Magistrate in any other case may remand such person to prison to undergo Such unexpired portion.

(8) A person remanded to prison under sub-section (7) shall, subject to the provisions of' section 122, be released at any time on giving security in

accordance with the terms of the original order for the unexpired portion aforesaid to the court or Magistrate by whom such order was made, or to its or his successor.

(9) The High Court or Court of Sessions may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by any order made by it, and the District Magistrate, in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case, may make such cancellation where such bond was executed under his order or under the order of any other court in his district.

(10) Any surety for the peaceable conduct or good behaviour of another person ordered to execute a bond under this Chapter may at any time apply to the court making such order to cancel the bond and on such application being made, the court shall issue a summons or warrant, as it thinks fit, requiring the person for whom such surety is bound to appear or to be brought before it.

124. Security for unexpired period of bond. — (1) When a person for whose appearance a summons or warrant has been issued under the proviso to sub-section (3) of section 121 or under sub-section (10) of section 123, appears or is brought before the Magistrate or court, the Magistrate or court shall cancel the bond executed by such person and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same person description as the original security.

(2) Every such order shall, for the purposes of sections 120 to 123 (both inclusive), be deemed to be an order made under section 106 or section 117, as the case may be.

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THE INDIAN PENAL CODE, 1860

30. "Valuable security".— The words "valuable security" denote a document which is, or purports to be a document whereby any legal right is created, extended,

transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration

A writes his name on the back of a bill-of-exchange. As the effect of this endorsement is to transfer the right of the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security".

406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(See: ***Pratibha Rani v. Suraj Kumar, AIR 1985 SC 628*** in which the Apex Court has held that dowry articles including *stridhan* given by parents of wife when are entrusted to husband or his relatives and subsequently dishonestly misappropriated, it amounts to criminal breach of trust.)

498A. Husband or relative of husband of a woman subjecting her to cruelty. — Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. — For the purpose of this section, 'cruelty' means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) or the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her of any person related to her to meet such demand.

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THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

NO. 43 OF 2005

[*26th October, 2006*.]

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement. **–**

(1) This Act may be called the Protection of Women from Domestic Violence Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions. –

2. In this Act, unless the context otherwise requires,-

(a) "**aggrieved person**" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(b) "**child**" means any person below the age of eighteen years and includes any adopted, step or foster child;

(c) "**compensation order**" means an order granted in terms of section 22;

(d) "**custody order**" means an order granted in terms of section 21;

(e) "**domestic incident report**" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) "**domestic relationship**" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in

the nature of marriage, adoption or are family members living together as a joint family;

(g) "**domestic violence**" has the same meaning as assigned to it in section 3;

(h) "**dowry**" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);

(i) "**Magistrate**" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

(j) "**medical facility**" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;

(k) "**monetary relief**" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;

(l) "**notification**" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(m) "**prescribed**" means prescribed by rules made under this Act;

(n) "**Protection Officer**" means an officer appointed by the State Government under sub-section (1) of section 8;

(o) "**protection order**" means an order made in terms of section 18;

(p) "**residence order**" means an order granted in terms of sub-section (1) of section 19;

(q) "**respondent**" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

(r) "**service provider**" means an entity registered under sub-section (1) of section 10;

(s) "**shared household**" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

(t) "**shelter home**" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

CHAPTER II

DOMESTIC VIOLENCE

3. Definition of domestic violence. – For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I. – For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes–

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an

interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

CHAPTER III

POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS, ETC.

4. Information to Protection Officer and exclusion of liability of informant. –

(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

5. Duties of police officers, service providers and Magistrate. **–** A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an

incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person-

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. Duties of shelter homes. – If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

7. Duties of medical facilities. – If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

8. Appointment of Protection Officers.– (1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of Protection Officers. **–** (1) It shall be the duty of the Protection Officer–

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station

and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

10. Service providers. – (1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

(2) A service provider registered under sub-section (1) shall have the power to–

(a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;

(b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;

(c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is

deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. Duties of Government. –The Central Government and every State Government, shall take all measures to ensure that–

(a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

(b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

(c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;

(d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

CHAPTER IV

PROCEDURE FOR OBTAINING ORDERS OF RELIEFS

12. Application to Magistrate. – (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without

prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

13. Service of notice.-(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

14. Counselling. – (1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or

jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

15. Assistance of welfare expert. **–** In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

16. Proceedings to be held in camera. **–** If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

17. Right to reside in a shared household. **–** (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

18. Protection orders. **–**The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. Residence orders. – (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs. – (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the

aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or

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

21. Custody orders. – Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the

application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

22. Compensation orders. – In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

23. Power to grant interim and *ex parte* orders. – (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

24. Court to give copies of order free of cost. – The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer in-charge of the police station in the jurisdiction of which the Magistrate

has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

25. Duration and alteration of orders. – (1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

26. Relief in other suits and legal proceedings. – (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

27. Jurisdiction. – (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which–

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

28. Procedure. – (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall

be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

29. Appeal. – There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

CHAPTER V

MISCELLANEOUS

30. Protection Officers and members of service providers to be public servants. –The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

31. Penalty for breach of protection order by respondent. – (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof. – (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

33. Penalty for not discharging duty by Protection Officer. – If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

34. Cognizance of offence committed by Protection Officer. – No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

35. Protection of action taken in good faith. – No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

36. Act not in derogation of any other law. –The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

37. Power of Central Government to make rules. – (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;

(b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;

(c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;

(d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;

(e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;

(f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;

(g) the rules regulating registration of service providers under sub-section (1) of section 10;

(h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;

(i) the means of serving notices under sub-section (1) of section 13;

(j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;

(k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;

(l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;

(m) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2006

1. **Short title and commencement**.– (1) These rules may be **called the Protection of Women from Domestic Violence Rules, 2006.**

(2) They shall come into force on the 26th day of October, 2006.

2. **Definitions**.– In these rules, unless the context otherwise requires.–

(a) "Act" means the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

(b) "complaint" means any allegation made orally or in writing by any person to the Protection Officer :

(c) "Counsellor" means a member of a service provider competent to give counselling under sub-section (1) of section 14;

(d) "Form" means a form appended to these rules;

(e) "section" means a section of the Act;

(f) words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Qualifications and experience of Protection Officers.– (1) The Protection Officers appointed by the State Government may be of the Government or members of non governmental organizations :

Provided that preference shall be given to women.

(2) Every person appointed as Protection Officer under the Act shall have atleast three years experience in social sector.

(3) The tenure of a Protection Officer shall be a minimum period of three years.

(4) The State Government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her functions under the Act and these rules.

4. Information to Protection Officers.– (1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to

be committed may give information about it to the Protection Officer having jurisdiction in the area either orally or in writing.

(2) In case the information is given to the Protection Officer under sub-rule (1) orally, he or she shall cause it to be reduced to in writing and shall ensure that the same is signed by the person giving such information and in case the informant is not in a position to furnish written information the Protection Officer shall satisfy and keep a record of the identity of the person giving such information.

(3) The Protection Officer shall give a copy of the information recorded by him immediately to the informant free of cost.

5. Domestic incident reports.– (1) Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form I and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the service providers in that area.

(2) Upon a request of any aggrieved person, a service provider may record a domestic incident report in Form I and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.

6. Applications to the Magistrate. – (1) Every application of the aggrieved person under section 12 shall be in Form II or as nearly as possible thereto.

(2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under sub-rule (1) and forwarding the same to the concerned Magistrate.

(3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her contents thereof.

(4) The affidavit to be filed under sub-section (2) section 23 shall be filed in Form III.

(5) The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

7. Affidavit for obtaining *ex parte* orders of Magistrate.– Every affidavit for obtaining *ex parte* order under sub-section (2) of section 23 shall be filed in Form III.

8. Duties and functions of Protection Officers. – (I) It shall be the duty of the Protection Officer –

(i) to assist the aggrieved person in making a complaint under the Act, if the aggrieved person so desires;;

(ii) to provide her information on the rights of aggrieved persons under the Act as given in Form IV which shall be in English or in a vernacular local language;

(iii) to assist the person in making any application under section 12, or sub-section (2) of section 23 of any other provision of the Act or the rules made thereunder:

(iv) to prepare a "Safety Plan" including measures to prevent further domestic violence to the aggrieved person, in consultation with the aggrieved person in Form V, after making an assessment of the dangers involved in the situation and on an application being moved under section 12;

(v) to provide legal aid to the aggrieved person, through the State Legal Aid Services Authority;

(iv) to assist the aggrieved person and any child in obtaining medical aid at a medical facility including providing transportation to get the medical facility;

(vii) to assist in obtaining transportation for the aggrieved person and any child to the shelter;

(viii) to inform the service providers registered under the Act that their services may be required in the proceedings under the Act and to invite applications from service providers seeking particulars of

their members to be appointed as counsellors in proceedings under the Act under sub-section (1) of section 14 or Welfare Experts under section 15;

(ix) to scrutinise the applications for appointment as Counsellors and forward a list of available Counsellors to the Magistrate;

(x) to revise once in three years the list of available Counsellors by inviting fresh applications and forward a revised list of Counsellors on the basis thereof the concerned Magistrate;

(xi) to maintain a record and copies of the report and documents forwarded under sections 9,12,20,21,22, 23 or any other provisions of the Act or these rules;

(xii) to provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimized or pressurized as a consequence of reporting the incident of domestic violence;

(xiii) to liaise between the aggrieved person or persons, police and service provider in the manner provided under the Act and these rules;

(xiv) to maintain proper records of the service providers, medical facility and shelter homes in the area of his jurisdiction.

(2) In addition to the duties and functions assigned to a Protection Officer under clauses (a) to (h) of sub-section (1) of section 9, it shall be the duty of every Protection Officer –

(a) to protect the aggrieved persons from domestic violence, in accordance with the provisions of the Act and these rules;

(b) to take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person, in accordance with the provisions of the Act and these rules.

9. Action to be taken in cases of emergency.– If the Protection Officer or a service provider receives reliable information through e-mail or a telephone call or the like either from the aggrieved person or from any person

who has reason to believe that an act of domestic violence is being or is likely to be committed and in such an emergency situation, the Protection Officer or the service provider, as the case may be shall seek immediate assistance of the police who shall accompany the Protection Officer or the service provider, as the case may be, to the place of occurrence and record the domestic incident report and present the same to the Magistrate without any delay for seeking appropriate orders under the Act.

10. Certain other duties of the Protection Officers.– (1) The Protection Officer, if directed to do so in writing, by the Magistrate shall –

(a) Conduct a home visit of the shared household premises and make preliminary enquiry if the court requires clarification, in regard to granting *ex-parte* interim relief to the aggrieved person under the Act and pass an order for such home visit;

(b) after making appropriate inquiry, file a report on the emoluments, assets, bank accounts or any other documents as may be directed by the court ;

(c) restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person;

(d) assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directed by the court;

(e) assist the court in enforcement of orders in the proceedings under the Act in the manner directed by the Magistrate, including orders under section 12, section 18, section 19, section 20, section 21 or section 23 in such manner as may be directed by the court;

(f) take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.

(2) The Protection Officer shall also perform such other duties as may be assigned to him by the State Government or the Magistrate in giving effect to the provisions of the Act and these rules from time to time.

(3) The Magistrate may, in addition to the orders for effective relief in any case, also issue directions relating to general practice for better handling of the cases, to the Protection Officers within his jurisdiction and the Protection Officers shall be bound to carry out the same.

11. Registration of service providers.– (1) Any voluntary association registered under the societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance and desirous of providing service as a service provider, under the Act shall make an application under sub-section (1) of section 10 for registration as service provider in Form VI to the State Government.

(2) The State Government shall, after making such enquiry as it may consider necessary and after satisfying itself about the suitability of the applicant, register it as a service provider and issue a certificate of such registration :

Provided that no such application shall be rejected without giving the applicant an opportunity of being heard.

(3) Every association or company seeking registration under sub-section (1) of section 10 shall possess the following eligibility criteria, namely :–

(a) it should have been rendering the kind of services it is offering under the Act for atleast three years before the date of application for registration under the Act and these rules as a service provider;

(b) in case an applicant for registration is running a medical facility, or a psychiatric counselling centre, or a vocational training institution, the State Government shall ensure that the applicant fulfils the requirements for running such a facility or institution laid down by the respective regulatory authorities regulating the respective professions or institutions :

(c) in case an applicant for registration is running a shelter home, the State Government shall, through an officer or any authority or agency authorised by it, inspect the shelter home, prepare a report and record its finding on the report, detailing that –

(i) the maximum capacity of such shelter home for intake of persons seeking shelter;

(ii) the place is secure for running a shelter home for women and that adequate security arrangements can be put in place for the shelter home;

(iii) the shelter home has a record of maintaining a functional telephone connection or other communication media for the use of the inmates.

(4) The State Government shall provide a list of service providers in the various localities to the concerned Protection Officers and also publish such list of newspapers or on its website.

(5) The Protection Officer shall maintain proper records by way of maintenance of registers duly indexed, containing the details of the service providers.

12. Means of service of notices.– (1) The notices for appearance in respect of the proceedings under the Act shall contain the names of the person alleged to have committed domestic violence, the nature of domestic violence and such other details which may facilitate the identification of person concerned

(2) The service of notices shall be made in the following manner, namely :–

(a) the notices in respect of the proceedings under the Act shall be served by the protection Officer or any other person directed by him to serve the notice, on behalf of the Protection Officer, at the address where the respondent is stated to be ordinarily residing in India by the complainant or aggrieved person or where the respondent is stated to be gainfully employed by the complainant or aggrieved person, as the case may be;

(b) the notice shall be delivered to any person in charge of such place at the moment and in case of such delivery not being possible it shall be pasted at a conspicuous place on the premises;

(c) for serving the notice under section 13 or any other provision of the Act the provisions under Order V of the Civil Procedure Code, 1908 (5 of 1908) or the provisions under Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) as far as practicable may be adopted;

(d) any order passed for such service of notice shall entail the same consequences, as an order passed under Order V of the Civil Procedure Code, 1908 or Chapter VI of the Code of Criminal Procedure, 1973 respectively, depending upon the procedure found efficacious for making an order for such service under section 13 or any other provision of the Act and in addition to the procedure prescribed under the Order V or Chapter VI, the court may direct any other steps necessary, with a view to expediting the proceedings to adhere to the time limit provided in the Act.

(3) On a statement on the date fixed for appearance of the respondent, or a report of the person authorized to serve the notices under the Act, that service has been effected appropriate orders shall be passed by the court on any pending application for interim relief, after hearing the complainant or the respondent, or both.

(4) When a protection order is passed restraining the respondent from entering the shared household or the respondent is ordered to stay away or not to contact the petitioner, no action of the aggrieved person including an invitation by the aggrieved person shall be considered as waiving the restraint imposed on the respondent, by the order of the court, unless such protection order is duly modified in accordance with the provisions of sub-section (2) of section 25.

13. Appointment of Counsellors.– (1) A person from the list of available Counsellors forwarded by the Protection Officer, shall be appointed as a Counsellor under intimation to the aggrieved person.

(2) The following persons shall not be eligible to be appointed as Counsellors in any proceedings, namely :–

(i) any person who is interested or connected with the subject-matter of the dispute or is related to any one of the parties or to those who represent them unless such objection is waived by all the parties in writing;

(ii) any legal practitioner who has appeared for the respondent in the case of any other suit or proceedings connected therewith.

(3) The Counsellors shall as far as possible be women.

14. Procedure to be followed by Counsellors. – (1) The Counsellor shall work under the general supervision of the court or the Protection Officer or both.

(2) The Counsellor shall convene a meeting at a place convenient to the aggrieved person or both the parties.

(3) The factors warranting counselling shall include the factor that the respondent shall furnish an undertaking that he would refrain from causing such domestic violence complained by the complainant and in appropriate cases an undertaking that he will not try to meet or communicate in any manner through letter or telephone, electronic mail or through any medium except in the counselling proceedings before the counsellor or as permissibly by law or orders of a court of competent jurisdiction.

(4) The Counsellor shall conduct the counselling proceedings bearing in mind that the counselling shall be in the nature of getting an assurance, that the incidence of domestic violence shall not get repeated.

(5) The respondent shall not be allowed to plead any counter justification for the alleged act of domestic violence in counselling the fact that and any justification for the act of domestic violence by the respondent is not

allowed to be a part of the counselling proceeding should be made known to the respondent, before the proceedings begin.

(6) The respondent shall furnish an undertaking to the Counsellor that he would refrain from causing such domestic violence as complained by the aggrieved person and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, e-mail, or through any other medium except in the counselling proceedings before the Counsellor,

(7) If the aggrieved person so desires, the Counsellor shall make efforts of arriving at a settlement of the matter.

(8) The limited scope of the efforts of the Counsellor shall be to arrive at the understanding of the grievances of the aggrieved person and the best possible redressal of her grievances and the efforts shall be to focus on evolving remedies or measures for such redressal.

(9) The Counsellor shall strive to arrive at a settlement of the dispute by suggesting measures for redressal of grievances of the aggrieved person by taking into account the measures or remedies suggested by the parties for counscling and reformulating the terms for the settlement, wherever required.

(10) The Counseller shall not be bound by the provisions of the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908, or the Code of Criminal Procedure, 1973, and his action shall be guided by the principles of fairness and justice and aimed at finding way to bring an end to domestic violence to the satisfaction of the aggrieved person and in making such an effort the Counsellor shall give due regard to the wishes and sensibilities of the aggrieved person.

(11) The Counsellor shall submit his report to the Magistrate as expeditiously as possible for appropriate action.

(12) In the event the Counseller arrives at a resolution of the dispute, he shall record the terms of settlement and get the same endorsed by the parties.

(13) The court may, on being satisfied about the efficacy of the solution and after making a preliminary enquiry from the parties and after, recording

reason for such satisfaction, which may include undertaking by the respondents to refrain from repeating acts of domestic violence, admitted to have been committed by the respondents, accept the terms with or without conditions.

(14) The court shall, on being so satisfied with the report of consoling, pass an order, recording the terms of the settlement or an order modifying the terms of the settlement on being so requested by the aggrieved person, with the consent of the parties.

(15) In cases, where a settlement cannot be arrived at in the counselling proceedings, the Counsellor shall report the failure of such proceedings to the Court and the court shall proceed with the case in accordance with the provisions of the Act.

(16) The record of proceedings shall not be deemed to be material on record in the case on the basis of which any inference may be drawn or an order may be passed solely based on it.

(17) The Court shall pass an order under section 25, only after being satisfied that the application for such an order is not vitiated by force, fraud or coercion or any other factor and the reasons for such satisfaction shall be recorded in writing in the order, which may include any undertaking or surety given by the respondent.

15. Breach of Protection Order. – (1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.

(2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.

(3) The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.

(4) The aggrieved person may, if she so desires, make a complaint of breach of protection order or interim protection order directly to the Magistrate or the Police, if she so chooses.

(5) if, at any time after a protection order has been breached, the aggrieved person seeks his assistance, the protection officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.

(6) When charges are framed under section 31 or in respect of offences section 498A of the Indian Penal code, 1860 (45 of 1860), or any other offence not summarily triable, the Court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of the breach of Protection Order under section 31, in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974).

(7) Any resistance to the enforcement of the orders of the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act.

(8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having territorial jurisdiction and shall be dealt with as a cognizable offence as provided under sections 31 and 32.

(9) While enlarging the person on bail arrested under the Act, the Court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include –

(a) an order restraining the accused from threatening to commit or committing an act of domestic violence;

(b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;

(c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit;

(d) an order prohibiting the possession or use of firearm or any other dangerous weapon;

(e) an order prohibiting the consumption of alcohol or other drugs;

(f) any other order required for protection, safety and adequate relief to the aggrieved person.

16. Shelter to the aggrieved person. – (1) On a request being made by the aggrieved person, the Protection Officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6.

(2) When a Protection Officer makes a request referred to in sub-rule (1), it shall be accompanied by a copy of the domestic incident report registered, under section 9 or under section 10;

Provided that shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home.

(3) If the aggrieved person so desires, the shelter home shall not disclose the identity of the aggrieved person in the shelter home or communicate the same to the person complained against.

17. Medical Facility to the aggrieved person. – (1) The aggrieved person or the Protection Officer or the service provider may make a request under section 7 to a person in charge of a medial facility in writing clearly stating that the application is being made under section 7.

(2) When a Protection Officer makes such a request, it shall be accompanied by a copy of the domestic incident report :

Provided that the medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility.

(3) If no domestic incident report has been made, the person-in-charge of the medical facility shall fill in Form I and forward the same to the local Protection Officer.

(4) The medical facility shall supply a copy of the medical examination report to the aggrieved person free of cost.

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PART-IV

NOTES ON JUDICIAL PRONOUNCEMENTS OF SUPREME COURT & M.P. HIGH COURT

Notes on Section 498-A Indian Penal Code, 1860

1. POINT INVOLVED

‘Cruelty’, for the purpose of Section 498-A IPC, has to be established in that context, as it may be different from other statutory provisions – Proximity test and proof thereof explained.

Parties – *Manju Ram Kalita v. State of Assam*

Reported in – (2009) 13 SCC 330

The provisions of Section 498A IPC read as under:

> “***498A. Husband or relative of husband of a woman subjecting her to cruelty.*** — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> *Explanation.* — For the purposes of this section ‘cruelty’ means -
>
> (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
>
> (b) harassment of the woman where such harassment is with a view to coercing her to any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

Cruelty has been defined by the explanation added to the Section itself. The basic ingredients of Section 498A I.P.C. are cruelty and harassment.

The elements of cruelty so far as clause (a) is concerned, have been classified as follows:

(i) any 'wilful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any 'wilful' conduct which is likely to cause grave injury to the woman; or

(iii) any 'wilful' act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

In ***Mohd. Hoshan v. State of A.P., (2002) 7 SCC 414***, this Court while dealing with the similar issue held that mental or physical torture should be *continuously* practiced by the accused on the wife. The Court further observed as under:

> "Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of complaints, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from person to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."

In ***Smt. Raj Rani v. State (Delhi Administration), AIR 2000 SC 3559***, this Court held that while considering the case of cruelty in the context of the provisions of Section 498A I.P.C., the court must examine that allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.

In ***Girdhar Shankar Tawade v. State of Maharashtra, AIR 2002 SC 2078***, this Court held that "cruelty" has to be understood having a specific statutory meaning provided in Section 498A I.P.C. and there should be a case of continuous state of affairs of torture by one to another.

"Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S. 498-A I.P.C. as it may be different from other statutory provisions. It is to be determined/inferred by considering the conduct

of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A IPC. Causing mental torture to the extent that it becomes unbearable may be termed as cruelty.

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*2. POINT INVOLVED

Section 498-A Explns. (a) & (b), applicability – Held, basic ingredients of S. 498-A are cruelty and harassment – Further held, in Expln. (b) which relates to harassment there is absence of physical injury but it includes coercive harassment for demand of dowry- It deals with patent or latent acts of the husband or his family members – The provisions of Section 498-A IPC were introduced by an amendment to curb the harassment of a woman by her husband and/or his family member, for demand of dowry, etc. under the garb of fulfillment of the customary obligations.

Parties – ***Undavalli Narayana Rao v. State of Andhra Pradesh***

Reported in – (2009) 14 SCC 588

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3. POINT INVOLVED

* Limitation – Plea of bar of limitation should be raised at the stage of framing of charge.
* Whether cruelty is continuing offence? Held – Yes, new starting point of limitation starts on last act of cruelty
* Whether time barred complaint can be entertained with regard to offence u/s 498-A IPC? Held, Yes, time barred complaint can be entertained if it gives unfair advantage to accused husband or results in miscarriage of justice.

Parties – ***Arun Vyas and another v. Anita Vyas***

Reported in – AIR 1999 SC 2071

Section 239 has to be read along with Section240- Cr.P.C. If the magistrate finds that there is prima facie evidence or the material against the accused in support of the charge (allegations) he may frame charge in accordance with Section 240 Cr.P.C. But if he finds that the charge (the allegations or imputations) made against the accused do not make out a prima facie case and do not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused. Where the Magistrate finds that taking cognizance of the offence itself was contrary to any provision of law, like Section 468 Cr.P.C., the complaint being barred by limitation. So he cannot frame the charge, he has to discharge the accused. Indeed in a case there the Magistrate takes cognizance of an offence without taking note of Section 468 Cr.P.C., the most appropriate stage at which the accused can plead for his discharge is the stage of framing the charge. He need not wait till completion of trial. The Magistrate will be committing no illegality in considering that question and discharging the accused at the stage of framing charge if the facts so justify.

The essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. The last act of cruelty was committed against the respondent, within the meaning of the explanation, on October 13, 1988 when, on the allegation made by the respondent in the complaint to Additional CJM, she was forced to leave the matrimonial home. Having regard to the provisions of Sections 469 and 472 the period of limitation commenced for offences under Sections 406 and 498-A from October 13, 1988 and ended on October 12, 1991. But the charge-sheet was filed on December 22, 1995, therefore, it was clearly barred by limitation under Section 468 (2) (c) Cr.P.C.

It may be noted here that Section 473 Cr.p.C. which extends the period of limitation is in two parts. The first part contains *non obstante* clause and gives overriding effect to that section over Sections 468 to 472. The second part has two limbs. The first limb confers power on every competent Court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a Court to take cognizance of an offence if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. It is true that the expression in the interest of justice in Section 473 cannot be interpreted to mean in the interest of prosecution. What the Court has to see is 'interest of justice'. The interest of justice demands that the Court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the Courts, in case of delayed complaints, to construe liberally Section 473 Cr.P.C. in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do, in the interests of justice. When the conduct of the accused is such that applying rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the Court may take cognizance of an offence after the expiry of period of limitation in the interest of justice. This is only illustrative not exhaustive.

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4. POINT INVOLVED

Cruelty against married woman – Object of S. 498-A – Courts advised to be cautious against misuse of the provisions.

Parties – ***Sushil Kumar Sharma v. Union of India and others***

Reported in – (2005) 6 SCC 281

The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of "wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view.

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5. POINT INVOLVED

S. 293 of Criminal Procedure Code, 1973, S. 45 of Evidence Act, 1872 and S.498-A of Indian Penal Code, 1860

* Mere exhibiting hand writing expert's report is no evidence unless proved by examining hand writing expert – Such expert does not come within the category of Government scientific expert shown in S.293 (4) Cr.P.C.

* Conviction based on letters purported to be written by deceased (wife of appellant) and oral evidence of parents of deceased – No evidence produced that letters were written by deceased – Hand writing expert report filed but not duly proved – No explanation sought in accused statement regarding contents of letters – Such letters can't be used as evidence – Material omission and contradiction in oral evidence – Cruelty by husband (appellant) not proved – Conviction and sentence set aside.

Parties – ***Ayyub v. State of M.P.***

Reported in – I.L.R. (2008) M.P. 343

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6. POINT INVOLVED

* Words "relative of the husband", occurring in Section 498-A – Whether the word "relative" includes girlfriend or concubine? Held, No – By no stretch of imagination would a girlfriend or even a concubine in any etymological sense be a relative – The word "relative" principally includes a person related by blood, marriage or adoption – Principles laid down in various decisions applied**.** ***Reema Aggarawal v. Anupam, (2004) 3 SCC 199***, distinguished**.**

* "Cruelty", meaning of – Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same would not attract the wrath of Section 498-A IPC – Position explained.

Parties – *U. Suvetha v. State by Inspector of Police and another*

Reported in – (2009) 6 SCC 757

In the absence of any statutory definition, the term "relative" must be assigned a meaning as is commonly understood, ordinarily it would include father, mother husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. The meaning of the word "relative" would depend upon the nature of

the statute. It principally includes a person related by blood, marriage or adoption.

Herein, as noticed hereinbefore, relationship of the appellant with the husband of the first information is said to have been existing from before the marriage. Indisputably they lived separately. For all intent and purport the husband was also living at a separate place. The purported torture is said to have been inflicted by the husband upon the first informant either at her in law's place or at her parents' place. There is no allegation that the appellant had any role to play in that regard.

By no stretch of imagination would a girlfriend or even a concubine in an etymological sense be a "relative". The word "relative" brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. It no marriage has taken place, the question of one being relative of another would not arise.

The word " cruelty" has also been defined in the Explanation appended thereto. It is in two parts. Clause (a) of the said Explanation refers to a conduct, which is likely to drive the woman to commit suicide or to cause grave injury or danger to her life, limb or health (whether mental or physical); Clause (b) provides for harassment of the woman, where such harassment, is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security. It is not the case of the first informant that the appellant had any role to play with regard to demand of dowry.

The word "cruelty" having been defined in terms of the aforesaid Explanation, no other meaning can be attributed thereto. Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same, in our opinion, would not attract the wrath of Section 498-A of the Penal Code. An offence in terms of the said provision is committed by the persons specified therein. They have to the "husband" or his "relative". Either the husband of the woman or his relative must have subjected her to cruelty within the aforementioned provision. It the appellant had not (sic) been instigations the husband of the first informant to torture her, as has been noticed by the High Court, the husband would be committing some offence punishable under the other provisions of the Penal Code and the appellant may be held guilty for abetment

of commission of such an offence but not an offence under Section 498-A of the Penal Code.

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7. POINT INVOLVED

S. 498-A of Indian Penal Code, 1860 and Ss. 32 (1) & 6 of Evidence Act, 1872 – Cruelty – Proof – Evidence in statement regarding what deceased told as to torture and harassment by the accused has no connection with any circumstance of transaction which resulted in her death – Said evidence is not admissible u/s 32 (1) as well as u/s 6 of the Evidence Act as such statement is not made under the circumstances required to be applicable to the rule of *res gestae*.

Parties – *Bhairon Singh v. State of Madhya Pradesh*

Reported in – AIR 2009 SC 2603

The only evidence to bring home charge under Section 498A, IPC, is that of PW-4 and PW-5. In their deposition PW-4 and PW-5 stated that their sister told them that accused was torturing her as he wanted that her brothers arrange a job for him or the house at Ganj Basoda is given to him or a cash of Rs.1 lac is given to enable him to do some business. They deposed that as and when their sister come to their house, she would tell them that accused used to insert cloth in her mouth and give beatings for dowry. The trial court as well as the High Court relied on the evidence of PW-4 and PW-5 and held that charge under Section 498A, IPC, against the accused was proved. Apart from the statement attributed to the deceased, none of the witnesses had spoken anything which they had seen directly insofar as torture and harassment to Ranjana Rani @ Raj Kumari was concerned.

The moot question is: whether the statements attributed to the deceased could be used as evidence for entering upon a finding that the accused subjected Ranjana Rani @ Raj Kumari to cruelty as contemplated under Section 498A, IPC. In our considered view, the evidence of PW-4 and PW-5

about what the deceased Ranjana Rani @ Raj Kumari had told them against the accused about the torture and harassment is inadmissible under Section 32(1) of the Evidence Act and such evidence cannot be looked into for any purpose. Except Section 32(1) of the Indian Evidence Act, there is no other provision under which the statement of a dead person can be looked into in evidence. The statement of a dead person is admissible in law if the statement is as to the cause of death or as to any of the circumstance of the transactions which resulted in her death, in a case in which the cause of death comes into question. What has been deposed by PW-4 and PW-5 has no connection with any circumstance of transaction which resulted in her death. The death of Smt. Ranjana Rani @ Raj Kumari was neither homicidal nor suicidal; it was accidental. Since for an offence under Section 498A simpliciter, the question of death is not and cannot be an issue for consideration, we are afraid the evidence of PW-4 and PW-5 is hardly an evidence in law to establish such offence. In that situation Section 32(1) of the Evidence Act does not get attracted.

We are fortified in our view by the decision of this Court in ***Inder Pal v. State of M.P, (2001) 10 SCC 736***, wherein this Court considered the matter thus:

> "4. We will consider at first the contention as to whether there is any evidence against the appellant which can be used against him for entering upon a finding that he subjected Damyanti to cruelty as contemplated in Section 498-A IPC. PW 1 father of the deceased and PW 8 mother of the deceased have stated that Damyanti had complained to them of her plight in the house of her husband and particularly about the conduct of the appellant. PW 4 sister of the deceased and PW 5 a relative of the deceased have also spoken more or less on the same line. Exhibit P-7 and Exhibit P-8 are letters said to have been written by Damyanti. In those two letters reference has been made to her life in the house of her in-laws and in one of the letters she said that her husband had subjected her to beating.

5. Apart from the statement attributed to the deceased none of the witnesses had spoken of anything which they had seen directly. The question is whether the statements attributed to the deceased could be used as evidence in this case including the contents of Exhibits P-7 and P-8 (letters).

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6. Before deciding that question we have to point out that the High Court came to a conclusion that the allegation that she committed suicide was not substantiated. A dying declaration was recorded by the Executive Magistrate in which the deceased had stated that she got burns accidentally from a stove. If that be so, death could not be the result of either any harassment or any cruelty which she was subjected to. In this context we may point out that the State has not challenged the finding of the High Court that death of Damyanti was not due to commission of suicide.

7. Unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act there is no other provision under which the same can be admitted in evidence. In order to make the statement of a dead person admissible in law (written or verbal) the statement must be as to the cause of her death or as to any of the circumstance of the transactions which resulted in her death, in cases in which the cause of death comes into question. By no stretch of imagination can the statements of Damyanti contained in Exhibit P-7 or Exhibit P-8 and those quoted by the witnesses be connected with any circumstance of the transaction which resulted in her death. Even that apart, when we are dealing with an offence under Section 498-A IPC disjuncted from the offence under Section 306 IPC the question of her death is not an issue for consideration and on that premise also Section 32(1) of the Evidence Act will stand at bay so far as these materials are concerned."

The learned counsel for the State invited our attention to Section 6 of the Evidence Act. The rule embodied in Section 6 is usually known as the rule of res gestae. What it means is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. To form particular statement as part of the same transaction utterances must be simultaneous with the incident or substantial contemporaneous that is made either during or immediately before or after its occurrence. Section 6 of the Evidence Act, in the facts and circumstances of the case, insofar as admissibility of a statement of PW-4 and PW-5 about what the

deceased had told them against the accused of the treatment meted out to her is concerned, is not at all attracted.

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8. POINT INVOLVED

Complaint under S. 498-A – Tendency of over implicating the husband and all his immediate relations is not uncommon – Held, the Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases – Duty of Bar and Bench, in such cases underlined.

Parties – ***Preeti Gupta and another v. State of Jharkhand and another***

[3]
Reported in – (2010) 7 SCC 667

It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The

learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and

tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband‘s close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband‘s relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into

consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.

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9. POINT INVOLVED

Cruelty to wife – Relative of husband – Foster sister of husband does not come in the purview of the relative of husband as she is not related by blood, marriage or adoption – Therefore, she cannot be tried for an offence u/s 498-A of IPC.

Parties – ***Vijeta Gajra v. State of NCT of Delhi***

Reported in – AIR 2010 SC 2712

In ***U. Suvetha v. State By Inspector of Police & Anr. (2009) 6 SCC 757***, it was specifically held that in order to be covered under Section 498A, IPC one has to be a `relative` of the husband by blood, marriage or adoption. He pointed out that the present appellant was not in any manner a `relative` as referred to in Section 498-A, IPC and, therefore, there is no question of any allegation against her in respect of the ill-treatment of the complainant. The Court in this case examined the ingredients of Section 498A, IPC and noting the specific language of the Section and the Explanation thereof came to the conclusion that the word `relative` would not include a paramour or concubine or so. Relying on the dictionary meaning of the word `relative` and further relying on R. Ramanatha Aiyar`s *Advance Law Lexicon*, Volume 4, 3rd Edition, the Court went on to hold that Section 498A, IPC being a penal provision would deserve strict construction and unless a contextual meaning is required to be given to the statute, the said statute has to be construed strictly. On that behalf the Court relied on the judgment in ***T. Ashok Pai v. CIT, (2007) 7 SCC 162.*** A reference was made to the decision in ***Shivcharan Lal Verma & Anr. v. State of M.P. (2007) 15 SCC 369.*** After quoting from various decisions of this Court, it was held that reference to the word `relative` in Section 498A, IPC would be limited only to the blood relations or the relations by marriage.

The argument is undoubtedly correct, though opposed by the Learned Counsel appearing for the State. We are of the opinion that there will

be no question of her prosecution under Section 498A, IPC. Therefore, we hold that the FIR insofar as it concerned Section 498A, IPC, would be of no consequence and the appellant shall not be tried for the offence under Section 498-A IPC.

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10. POINT INVOLVED

Question of limitation and territorial jurisdiction regarding offence u/s 498-A – Limitation of three years as per S. 468 (2) (c) Cr.P.C. commences from the date of last act of cruelty – Issue of territorial jurisdiction, if challenged should be decided first – Law explained.

Parties – ***Ramesh and others v. State of T.N.***

Reported in – (2005) 3 SCC 507

On the point of limitation, we are of the view that the prosecution cannot be nullified at the very threshold on the ground that the prescribed period of limitation had expired. According to the learned counsel for the appellants, the alleged acts of cruelty giving rise to the offence under Section 498-A ceased on the exit of the informant from the matrimonial home on 02-10-1997 and no further acts of cruelty continued thereafter. The outer limit of time for taking cognizance would therefore be 3-10-2000, it is contended. However, at this juncture, we may clarify that there is an allegation in the FIR that on 13-10-1998/14-10-1998, when the informant's close relations met her in-laws at a hotel in Chennai, they made it clear that she will not be allowed to live with her husband in Mumbai unless she brought the demanded money and jewellery. Even going by this statement, the taking of cognizance on 13-2-2002 pursuant to the charge-sheet filed on 28-12-2001 would be beyond the period of limitation. The commencement of limitation could be taken as 2-10-1997 or at the most 14-10-1998. As pointed out by this Court in ***Arun Vyas v. Anita Vyas, (1999) 4 SCC 690*** the last act of cruelty would be the starting point of limitation. The three-year period as per Section 468 (2) (c) would expire by 14-10-2001 even if the latter date is taken into account. But that is not the end of

the matter. We have to still consider whether the benefit of extended period of limitation could be given to the informant. True, the learned Magistrate should have paused to consider the question of limitation before taking cognizance and he should have addressed himself to the question whether there were grounds to extend the period of limitation. On account of failure to do so, we would

have, in the normal course, quashed the order of the Magistrate taking cognizance and directed him to consider the question of applicability of Section 473. However, having regard to the facts and circumstances of the case, we are not inclined to exercise our jurisdiction under Article 136 of the Constitution to remit the matter to the trial court for taking a decision on this aspect. The fact remains that the complaint was lodged on 23-6-1999, that is to say, much before the expiry of the period of limitation and the FIR was registered by the All-Women Police Station, Tiruchirapalli on that day. A copy of the FIR was sent to the Magistrate's Court on the next day i.e. on 24-6-1999. However, the process of investigation and filing of charge-sheet took its own time. The process of taking cognizance was consequentially delayed. There is also the further fact that the appellants filed Writ Petition (Crl.) No. 1719 of 2000 in the Bombay High Court for quashing the FIR or in the alternative to direct its transfer to Mumbai. We are told that the High Court granted an *ex parte* interim stay. On 20.8.2001, the writ petition was permitted to be withdrawn with liberty to file a fresh petition. The charge-sheet was filed four months thereafter. It is in this background that the delay has to be viewed. The approach the court has to adopt in considering the question of limitation in regard to the matrimonial offences was highlighted by this Court in the case of ***Arun Vyas*** (supra). While pointing out in effect that the two limbs of the enabling provision under Section 473 are independent, this Court observed thus: (SCC p. 696, para 14)

> "14.... The first limb confers power on every competent court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a court to take cognizance of an offence, if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interests of justice. It is true that the expression 'in the interest of justice' in Section 473 cannot be interpreted to mean in the interest of prosecution. What the court has to see is 'interest of justice'. The interest of justice demands that the court should protect the oppressed and punish

> the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and the in-laws. It is, therefore, appropriate for the courts, in case of delayed complaints, to construe liberally Section 473 CrPC in favour of a wife who is subjected to cruelty if on the facts and in the circumstances of the case it is necessary so to do in the interests of justice. When the

> conduct of the accused is such that applying the rule of limitation will give an unfair advantage to him or result in miscarriage of justice, the court may take cognizance of an offence after the expiry of the period of limitation in the interests of justice. This is only illustrative, not exhaustive."

The next controversy arising in the case is about the territorial jurisdiction of the Magistrate's Court at Tiruchirapalli to try the cases. As already noted, the High Court was of the view that the questions raised in the petition cannot be decided before trial. It is contended by the learned counsel for the appellants that the issue relating to the place of trial can be decided even at this stage without going beyond the averments in the complaint filed by the respondents and the High Court should have, therefore, decided this point of jurisdiction, when it is raised before the trial has commenced. Our attention has been drawn to a recent decision of this Court in ***Y. Abraham Ajith v. Inspector of Police, (2004) 8 SCC 100.*** In that case, the Madras High Court refused to interfere under Section 482 CrPC when the issue of territorial jurisdiction of the Magistrate concerned to take cognizance of the offence was raised. This Court did not endorse the approach of the High Court for not recording the finding on the question of jurisdiction. On reading the allegations in the complaint, the Court came to the conclusion that no part of the cause of action arose in Chennai and therefore the Metropolitan Magistrate at Chennai could not have taken cognizance and issued summons. On this ground, the criminal proceedings were quashed and the complaint was directed to be returned to the respondent who was given liberty to file the same in an appropriate court. That was also a case of complaint for an offence under Sections 498-A and 406 CrPC filed by the wife against the appellant therein.

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11. POINT INVOLVED

Territorial jurisdiction of Court to try offence u/s 498-A IPC and Ss. 3 and 4 of Dowry Prohibition Act, 1961 – Explained.

Parties – ***Alok & anr. v. State of M.P.***

Reported in – 1 (2006) DMC 123 (H.C.)

19

The learned Counsel for applicants has raised only question of jurisdiction of the Shajapur Court for taking cognizance and trying the case. According to the learned Counsel, all the events of demand of dowry, ill-treatment and cruelty as per written FIR lodged by the complainant and statements of the prosecution witnesses had occurred at Bhopal, therefore, as per provision under Section 177 of the Cr.P.C., the jurisdiction for trying the case lies with the Bhopal Court. The learned counsel in support of his contention, has placed reliance on Supreme Court judgment passed in ***Y. Abraham Ajith and Others v. Inspector of Police, Chennai and Another, III (2004) CCR 130 (SC) = V (2004) SLT 152 = II (2004) DMC 371 SC = AIR 2004 SC 4286*** and ***Mohanlal and Others v. State*** passed by Delhi High Court, ***79 (1999) DLT 758 = II (1999) DMC 217 = 1999 (1) Crimes 271*** and submitted that in the case of ***Y. Abraham Ajith*** **(supra)** , the Supreme Court has specifically ruled that the offence punishable under Section 498-A IPC is not a continuing offence by its own implication.

On the other hand, the learned counsel for respondent has submitted that the offence under Section 498-A of IPC is a continuing offence and cruelty is defined in explanation in Section 498A of IPC. According to him, the act of the applicants and other co-accused persons have caused mental and physical cruelty to the complainant and even after leaving her matrimonial home at Bhopal, while living with her parents at Shajapur she is suffering from mental cruelty. The learned counsel has submitted that the complainant was married with co-accused Yogesh to live happy married life. But by demand of dowry and ill-treatment by beating and torture (torture mentally and physically both) she was compelled to leave her matrimonial house situated at Bhopal and while living with the parents at Shajapur, though thee is no event of further demand of dowry and ill-treatment but because of the previous acts of the

appellants and co-accused persons as detailed in FIR as well as in statements of the prosecution witnesses, still the complainant is suffering from mental cruelty. Therefore, the offence would be continuing one and Shajapur Court has jurisdiction as per provision under Section 178 (c) of the Cr.P.C. to try the case. The learned counsel has placed reliance on judgment passed by M.P. High Court, Bench Indore in case of ***Bhagsingh and Others v. Sunita and Others (supra),*** as well as ***Vijay Ratan Sharma and Others v. State of U.P. and Another, 1988 Cr.L.J. 1581.***

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Having heard the learned counsel for parties and after perusing the entire record, this Court is of clear view that in the judgment rendered by Supreme Court in case of ***Y. Abraham Ajith*** (supra), the Supreme Court has specifically considered in reference to the offence under Sections 498A and 406 of IPC whether these offences are continuing offences or not and held in the light of earlier Supreme Court judgment passed in case of ***State of Bihar v. Deokaran Nenshi and Another, AIR 1973 SC 908*** that:

> "Continuing offence is one which is susceptible of continuance is distinguishable from the one which is committed once and for all, that it is one of those offences which arises out of the failure to obey or comply with a rule or its requirement and which involves a penalty, liability continues till compliance, that on every occasion such disobedience or non-compliance occurs or recurs, there is the offence committed."

The Supreme Court has also considered and distinguished the judgment passed in the case of ***Sujata Mukherji v. Prashant Kumar Mukherji, II (1997) CCR 117 (SC) = AIR 1997 SC 2465,*** wherein the Supreme Court has held in the factual background of that case, the Clause (c) of Section 178 was attracted. In that case, the husband after demand of dowry at his residence also went to the place where complainant was residing and has assaulted her. These events had given jurisdiction to the Court where the complainant was residing and Clause (c) of Section 178 was attracted.

In the case in hand, there is absolutely no iota of allegation/allegations that any act of demand of dowry, ill-treatment directly or indirectly was done by the applicants and other co-accused persons with the complainant at Shajapur which may constitute offences much less at Shajapur.

Therefore, the logic of Section 178 (c) of the Code relating to continuance of the offence cannot be applied.

The Supreme Court also considered in detail the interpretation and real prospect of Section 77 Cr.P.C. which says that every offence was ordinarily be enquired into and tried by Court within whose local jurisdiction it was committed. The Supreme Court equated the word "cause of action" used in civil cases with the word " local jurisdiction" used in criminal cases and said that these variations in etymological expression do not really make the position

different. The expression "cause of action", therefore, not a stranger to criminal cases.

In the opinion of this Court, the judgments rendered by learned Single Judge of this High Court in ***Bhagsingh (supra)*** and ***Vijay Ratan Sharma (supra)*** carry no weight in the light of judgment of Supreme Court passed in ***Y. Abraham's case (supra)***. Judgments of both the High Courts are impliedly over-ruled by Supreme Court judgment.

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12. POINT INVOLVED

Cruelty against married woman – Territorial jurisdiction of the Court – Alleged acts of harassment committed at Asansol – Whether Court at Indore has territorial jurisdiction – Held, No.

Parties – ***Gurmeet Singh v. State of M.P.***

Reported in – 2006 (1) MPLJ 250

I have gone through the FIR lodged by the complainant. On perusal of the FIR it is crystal clear that the complainant was subjected to cruelty and harassment and demand of dowry was also made at Asansol only. She was forced to leave her matrimonial place on account of failure to fulfil the said demand of dowry. She has started to reside at Indore since October, 2003, and thereafter at Indore not even a whisper of allegations about any demand of

dowry or commission of any act constituting an offence has been committed or demand of dowry was made continuously by the applicant- husband. The facts of the present case are quite similar to the referred case of ***Y. Abraham Ajith v. Inspector of Police, Chennai, AIR 2004 SC 4286***. In para-11 the Apex Court has held that:

> "in the present case the factual position is different and the complainant herself left the house of the husband on 15-4-1997 on account of alleged dowry demands by the husband and his relations. There is thereafter not even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of section 178(c) of the Code relating to continuance of the offence cannot be applied".

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In the present case also the complainant had left the matrimonial place on account of demands of dowry and thereafter no allegations about demand of dowry and commission of cruelty or harassment was made. Therefore in the present case also the logic of section 178 (c) of the Code relating to continuance of the offence cannot be applied.

This Court has also considered the application of sections 177 and 178 of the Code in respect of the offence under section 498A read with section 34 of the Penal Code in the matter of ***Shakuntala Sharma and ors. vs. State of M.P. and another*** reported in ***2005 (3) MPLJ 338***. In this case also the demand of dowry was made at Bhopal, whereas the FIR was lodged by the complainant at Police Station Chhatarpur and the charge-sheet was filed at Chhatarpur. The learned Single Judge of this Court relying upon the principles laid down by the Apex Court in ***Y. Abraham Ajith's case*** (supra) held that the Criminal Court of Chhatarpur has no jurisdiction to try the alleged offences against the accused.

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13. POINT INVOLVED

> Ss. 406 and 498-A of Indian Penal Code, 1860 – Territorial jurisdiction regarding the offence u/s 498 IPC – The Court within whose jurisdiction offence committed has

jurisdiction –Territorial Jurisdiction regarding offence u/s 406 the Court within whose local jurisdiction the offence was committed or any part of the subject of the offence received or retained or was required to be returned or accounted for, has jurisdiction – Law explained.

Parties – ***Mohammad Noor and others v. Nikhat Pharjana***

Reported in – 2006 (1) MPLJ 486

The allegations regarding cruelty as mentioned in the complaint took place at matrimonial home in Uttar Pradesh then certainly in view of the aforesaid decisions of the Supreme Court, "***Surjit Singh v. Nahar Ram and another, 2004 L.T. (SC) 118*** the Bhopal Court has no jurisdiction to take the cognizance for the offence of cruelty i.e. 498A Indian Penal Code. But so far offence of section 406, Indian Penal Code the breach of trust is concerned the Bhopal Court has jurisdiction to entertain the complaint if other circumstances are prima facie proved by admissible evidence because the Court of either place Bhopal or Uttar Pradesh had jurisdiction as per provision of Section 181 (4) Criminal Procedure Code which says as under :

> "**181**. **Place of trial in case of certain offences** – (4) Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person."

The case of the Apex Court as cited by petitioner AIR 1985 SC 628 (supra) in such matter the section 181 (4) Criminal Procedure Code was not considered and therefore on this point this reported case is distinguishable. While the Bhopal Court is having the jurisdiction as per decided case of this Court in the matter of ***Gopal Rao vs. Baldeo*** reported in ***1960 MPLJ Note 180*** in which it was held as under :

"It is not essential under sub-section (2) of section 181, Criminal Procedure Code that at the time property is said to have been received or retained by the accused person, he must have a dishonest intention to misappropriate it or to commit criminal breach of trust in respect thereof. It is enough if the property which is the subject of the offence was received or retained by the accused at a particular place to give jurisdiction to the Magistrate of that place to try the case, even though the property was received lawfully and innocently at that place and was subsequently dealt with dishonestly at another place. ***AIR 1954 All. 648 and AIR 1927 Bom. 38."***

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In view of the aforesaid the Bhopal Court has jurisdiction to entertain the matter for cognizance under section 406, Indian Penal Code. But so far the cognizance under Section 498A of Indian Penal Code is concerned the complaint is not maintainable in such Court.

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*14. POINT INVOLVED

Ss. 178 (c), 451 & 457 of Criminal Procedure Code, 1973 and S. 498-A of Indian Penal Code, 1860 – Offence punishable u/s 498-A IPC is not a continuing offence – Admittedly, as many as five out of the eight applicants did not commit any act of cruelty at Bhopal, no part of cause of action against them had arisen at Bhopal and against rest three applicants, cause of action accrued at Unnao where most of alleged acts of cruelty committed – Offence u/s 498-A IPC must be tried at a Court at Unnao and not at Bhopal – Petition u/s 482 allowed by the High Court with the direction to Trial

Magistrate to return the charge sheet to SHO for presentation before a Court of competent jurisdiction at Unnao.

Parties – ***Taskeen Ahmed v. State of M.P.***

Reported in – I.L.R. (2008) M.P. 29

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15. POINT INVOLVED

Sections 2 (c), 155 (2), 155 (4), 173 and 198 of Criminal Procedure Code, 1973, Sections 417, 420, 494, 495 and 498-A of Indian Penal Code, 1860 and Sections 5 (i) and 11 of Hindu Marriage Act, 1955

* Bigamy – Prosecution for – Scope, meaning and interpretation of expression "aggrieved person" under Section 198 CrPC – Held, a woman with whom a second marriage is solemnized by suppressing fact of former marriage is an aggrieved person and she is entitled to file a complaint under Sections 494 and 495 IPC as Section 495 is an extension of Section 494 IPC – Debarring second wife from filing complaint under Section 494 IPC would be height of perversity.

* Where the matter under investigation before the police on the basis of an FIR relates to cognizable as well as non cognizable offence, and after investigation if the police files a chargesheet, then the Court can take cognizance also of the non-cognizable offence

with other cognizable offence by virtue of Section 155 (4) CrPC – Even in these circumstances, bar under Section 198 CrPC will not arise.

* Second wife is "wife" within the meaning of Section 498-A and is entitled to maintain a complaint under the said provision.

Parties – ***A. Subhash Babu v. State of Andhra Pradesh and another***

Reported in – (2011) 7 SCC 616

26

Section 494 introduces monogamy which is essentially voluntary union of life of one man with one woman to the exclusion of all others. It enacts that neither party must have a spouse living at the time of marriage. Polygamy was practiced in many sections of Hindu society in ancient times. It is not a matter of long past that in India, hypergamy brought forth wholesale polygamy and along with it misery, plight and ignominy to woman having no parallel in the world. In post vedic India a King could take and generally used to have more than one wife. Section 4, of Hindu Marriage Act nullifies and supersedes such practice all over India among the Hindus. Section 494 is intended to achieve laudable object of monogamy. This object can be achieved only by expanding the meaning of the phrase "aggrieved person".

For a variety of reasons the first wife may not choose to file complaint against her husband e.g. when she is assured of re-union by her husband, when husband assures to snap the tie of second marriage etc. Non-filing of the complaint under Section 494 IPC by first wife does not mean that the offence is wiped out and monogamy sought to be achieved by means of Section 494 IPC merely remains in statute book. Having regard to the scope, purpose, context and object of enacting Section 494 IPC and also the prevailing practices in the society sought to be curbed by Section 494 IPC, there is no manner of doubt that the complainant should be an aggrieved person. Section 198(1)(c) of the Criminal Procedure Code, amongst other things, provides that

where the person aggrieved by an offence under Section 494 or Section 495 IPC is the wife, complaint on her behalf may also be filed by her father, mother, sister, son, daughter etc. or with the leave of the Court, by any other person related to her by blood, marriage or adoption.

In ***Gopal Lal Vs. State of Rajasthan, (1979) 2 SCC 170*** this Court has ruled that in order to attract the provisions of Section 494 IPC both the marriages of the accused must be valid in the sense that the necessary ceremonies required by the personal law governing the parties must have been duly performed.

Though Section 11 of the Hindu Marriage Act provides that any marriage solemnized, if it contravenes the conditions specified in Clause (i) of

Section 5 of the said Act, shall be null and void, it also provides that such marriage may on a petition presented by either party thereto, be so declared. Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband.

The expression “aggrieved person” denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant. Section 494 does not restrict right of filing complaint to the first wife and there is no reason to read the said Section in a restricted manner as is suggested by the learned Counsel for the appellant.

Section 494 does not say that the complaint for commission of offence under the said section can be filed only by wife living and not by the woman with whom subsequent marriage takes place during the life time of the wife living and which marriage is void by reason of its taking place during the life of such wife. The complaint can also be filed by the person with whom second marriage takes place which is void by reason of its taking place during the life of first wife.

To hold that a woman with whom second marriage is performed is not entitled to maintain a complaint under Section 494 IPC though she suffers legal injuries would be the height of perversity.

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Section 495 IPC provides that if a person committing the offence defined in Section 494 IPC conceals from the person with whom the subsequent marriage is contracted, the fact of the former marriage, the said person is liable to be punished as provided therein.

The offence mentioned in Section 495 IPC is an aggravated form of bigamy provided in Section 494 IPC. The circumstance of aggravation is the concealment of the fact of the former marriage to the person with whom the second marriage is contracted. Since the offence under Section 495 IPC is in essence bigamy, it follows that all the elements necessary to constitute that offence must be present here also. A married man who by passing himself off as unmarried induces an innocent woman to become, as she thinks his wife, but in reality his mistress, commits one of the grossest forms of frauds known to law and therefore severe punishment is provided in Section 495 IPC.

Section 495 begins with the words “whoever commits the offence defined in the last preceding Section.....” The reference to Section 494 IPC in Section 495 IPC makes it clear that Section 495 IPC is extension of Section 494 IPC and part and parcel of it. The concealment spoken of in Section 495 IPC would be from the woman with whom the subsequent marriage is performed. Therefore, the wife with whom the subsequent marriage is contracted after concealment of former marriage, would also be entitled to

lodge complaint for commission of offence punishable under Section 495 IPC. Where second wife alleges that the accused husband had married her according to Hindu rites despite the fact that he was already married to another lady and the factum of the first marriage was concealed from her, the second wife would be an aggrieved person within the meaning of Section 198 Cr. P.C.

If the woman with whom the second marriage is performed by concealment of the former marriage is entitled to file a complaint for commission of offence under Section 495 IPC, there is no reason why she would not be entitled to file a complaint under Section 494 IPC more particularly when Section 495 IPC is an extension and part and parcel of Section 494 IPC.

For all these reasons, it is held that the woman with whom a second marriage is contracted by suppressing the fact of former marriage would be entitled to maintain a complaint against her husband under Sections 494 and 495 IPC.

Section 2(c) of the Code of Criminal Procedure, 1973 defines the phrase “Cognizable Offence” to mean an offence for which and “Cognizable Case” means a case in which, a Police Officer may, in accordance with the First Schedule or under any other law for the time being in force arrest without warrant. Part I of the First Schedule to the Code of Criminal Procedure, 1973 relating to offences under the Indian Penal Code inter alia mentions that Section 494 and 495 are non-cognizable.

Section 154 of the Criminal Procedure Code relates to information in cognizable cases and provides inter alia that every information relating to the commission of a cognizable offence, if given orally to an Officer in charge of a Police Station, shall be reduced to writing by him and be read over to the informant. Section 156 of the Code provides that any Officer in charge of a Police Station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over a local area within the limits of such station would have power to enquire into or try under provisions of Chapter XIII of Criminal Procedure Code. As Sections 494 and 495 are made non-cognizable, a Police Officer would not have power to

investigate those cases without the order of a Magistrate, having a power to try such cases or commit such cases for trial as provided under Section 155(2) of the Code.

Further, as per Section 198 (1) (c), Court cannot take cognizance of an offence punishable under sections 494 and 495 IPC except upon a complaint made by some person aggrieved by the offence as enumerated therein. Even if it is assumed that in view of Section 198 (1) (c) of the CrPC the Magistrate is disentitled to take cognizance of the offence punishable under Sections 494 and 495 IPC if the matter under investigation before the police also relates to other cognizable offence and if the police files a charge-sheet, the court can take cognizance also of the offence under Section 494 along with

other cognizable offences by virtue of Section 155 (4) of the Criminal Procedure Code.

(iii) Section 155(4) of the Code inter alia provides that:

> "Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable"

Here in this case in the charge sheet it is mentioned that the appellant has also committed offence punishable under Section 420 of the Indian Penal Code which is cognizable and therefore this is a case which relates to two or more offences of which at least one is cognizable and therefore the case must be deemed to be cognizable case notwithstanding that the other offences are non- cognizable. This is not a case in which the FIR is exclusively filed for commission of offences under Sections 494 and 495 IPC. The case of the respondent no. 2 is that the appellant has committed offences punishable under Sections 417, 420, 494, 495 and 498-A of the IPC.

A question may arise as to what should be the procedure to be followed by a complainant when a case involves not only non- cognizable offence but one or more cognizable offences as well. It is somewhat anomalous that the aggrieved person by the alleged commission of offences punishable under Sections 494 and 495 IPC should file complaint before a Court and that the same aggrieved person should approach the police officer for alleged

commission of offences under Sections 417, 420 and 498A of the Indian Penal Code. Where the case involves one cognizable offence also alongwith non-cognizable offences it should not be treated as a non- cognizable case for the purpose of sub-section 2 of Section 155 and that is the intention of legislation which is manifested in Section 155(4) of the Code of Criminal Procedure.

So far Section 498-A IPC is concerned, this Court in ***Reema Aggarwal v. Anupam, (2004) 3 SCC 199*** after examining the scope of Section 498-A of the Penal Code and holding that a person who enters into marital arrangement cannot be allowed to take shelter behind the smokescreen of contention that since there was no valid marriage the question of dowry does not arise, held as under:

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"The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of their role and status as "husband" is no ground to exclude them from the purview of Section 304B or 498A IPC, viewed in the context of the very object and aim of the legislations introducing those provisions."

In view of the firm and clear law laid down on the subject this Court is of the confirmed view that second wife is "wife" within the meaning of Section 498-A IPC and is entitled to maintain a complaint under the said provision.

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16. POINT INVOLVED

Sections 311, 320, 397 and 401 of Criminal Procedure Code, 1973 and Sections 494 and 498-A of Indian Penal Code, 1860

Factual position of this case

While the trial under Sections 494 and 498-A IPC was pending, the accused (husband) purported to enter into some

sort of settlement with the complainant (wife) – In terms of the settlement, he accepted to take her (the complainant) back at his house even though he had taken a second wife in the meanwhile. Hence, when the complainant was examined before the trial court she did not press the charges but expressed her willingness to live with her husband and his second wife. Later on, however, before the conclusion of the trial she filed a petition before the trial court stating that the accused (the husband) had breached

the settlement and thrown her out from his house – In those circumstances, the trial court recalled her for re examination as a court witness under Section 311 of the Cr.P.C. On her examination as a court witness, she fully supported the allegations made by her in the complaint. Eventually, the trial court convicted the petitioner under Sections 494 and 498-A of the Penal Code – In appeal the Appellate Court set aside the Trial Court's order but in revision, the High Court set aside the order passed by the Appellate Court and restored the order of conviction and sentence passed by the Trial Court – Held by the Apex Court, High Court took the correct view of the matter and its order cannot be said to be an excess of revisional jurisdiction under Sections 397 and 401 CrPC.

Parties – ***Lal Kishore Jha v. State of Jharkhand and another***

Reported in – (2011) 6 SCC 453

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17. POINT INVOLVED

Section 498-A of Indian Penal Code, 1860

* Section 498-A IPC being a penal provision deserves strict construction, hence only the husband or his relative could be proceeded against for subjecting the wife to "cruelty" which has been specifically defined in the explanation thereto – Neither a girlfriend nor a

concubine is the relative of a husband for this purpose since they are not connected by blood or marriage or adoption to the husband.

Parties – ***Sunita Jha v. State of Jharkhand and another***

Reported in – (2010) 10 SCC 190

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18. POINT INVOLVED

Sections 498-A & 304-B of the Indian Penal Code, 1860

- If a document is produced by the prosecution but not exhibited, it is always open for the defence to seek reliance on such document to falsify the prosecution version.
- Demand and payment of dowry – Effect of absence of documentary evidence – It is not a commercial

transaction, so absence of documentary evidence in this regard should not be weighed by the Trial Court.

- Demand and payment of dowry – Effect of absence of independent witness – Demand and payment would not be made public inasmuch as such talks would be within closed doors and would be within the knowledge of the parties to the marriage and kith and kin of the bride and bridegroom, so absence of independent witness is quite natural.

- Delay in lodging FIR – Delay *per se* may not render prosecution case doubtful because there may be various reasons for lodging the FIR with some delay – It is necessary for the prosecution to come forward with the explanation.

Parties – *Ramaiah alias Rama v. State of Karnataka*

Reported in – (2014) 9 SCC 365

The High Court has given a different glance to the entire matter. According to it, the aforesaid approach of the trial court was erroneous in law as well as in appreciation of the evidence on record. After taking note of the fact that Laxmi died within six months of her marriage and it was an unnatural death, the High Court has lamented on the conduct of the appellant and has arrived at the conclusion that it was the appellant who was responsible for the death of Laxmi and found him guilty of offence under Section 304-B of IPC. The High Court has also

accepted the version of the prosecution that Laxmi was harassed and humiliated on account of non-fulfillment of the demand of dowry made by the appellant and, therefore, presumption under Section 113-B of the Evidence Act was attracted. As per the High Court, the appellant has not been able to lead any satisfactory evidence to dislodge this presumption. The infirmities found in the depositions of PW-1 to PW-5 by the trial court have been brushed aside and discarded by the High Court as irrelevant and perverse. The High Court held that it would be impossible to expect any party to the marriage talks to keep a record of demand and payment of dowry as if it was a commercial transaction and, therefore, the absence of documentary evidence in this regard should not have weighed with the trial court. The High Court also observed that there was

no admission made by PW-1 that even without the alleged demand of dowry, he would have given customary articles like clothes and ornaments and no such customary practice was indicated. The finding of the trial court that the case of the prosecution regarding demand and payment of dowry was not proved in the absence of anyone from the village of the accused is also brushed aside by observing that such a demand and payment would not be made public inasmuch as such talks would be within closed doors and would be within the knowledge of the parties to the marriage and kith and kin of the bride and bridegroom. Further, apart from PW-1 to PW-3, PW-4, who is the neighbour of PW-1 and PW-2, supported the version of the demand of dowry and the harassment of Laxmi at the hands of the appellant and his family members. In the present case, it would be prudent to start the discussion by taking note of the conduct of the maternal uncle (PW-1), his wife (PW-2) and natural mother (PW-3) of the deceased. They accept that information about the death of Laxmi was received by them between 10.00 a.m. to 12.30 p.m. on 22.05.1993. They also accept the fact that

they had reached the place of occurrence. Body of the deceased was cremated on 22.05.1993. There is some dispute as to whether these persons were present at the time of cremation. According to them, deceased was cremated before they reached the village of the appellant. To falsify this position taken by the prosecution through these witnesses, the learned counsel for the appellant had taken us to the evidence of PW-8 who had drawn Mahazar near the well. This Mahazar coupled with the statement of PW-8 is a very significant piece of evidence which has considerable effect in denting the creditworthiness of the testimony of these witnesses. As per PW-8 himself, when he had reached the spot, it was the mother of the deceased who pointed out the place where the dead body was lying. This assertion amply demonstrates that mother of the

deceased had known where the body was kept and she along with PW-1 and PW-2 had reached the place of occurrence before the dead body was cremated. Relying upon this evidence, the trial court has disbelieved the story of the prosecution that Laxmi was cremated even before these persons had reached the village of the appellant. Strangely, the High Court has discarded Mahazar drawn by PW-8 by giving a spacious reason viz. it was not an exhibited document before the Court, little realising that this was the document produced by the prosecution itself and even without formal proof thereto by the prosecution, it was always open for the defence to seek reliance on such an evidence to falsify the prosecution version. Moreover, PW-8 has specifically referred to this document in his evidence. It is also a matter of record that a specific suggestion was made to PW-3 (mother of the deceased) in the cross-examination to the effect that it is she who had pointed out the place of the dead body lying near the well to the Police personnel. The version of PW-1 to PW-3 that they reached the village of the appellant after Laxmi had already been cremated, does not inspire confidence and appears to be mendacious. We

may hasten to add here that many times in such type of cases, there can be reasons for keeping quite at the given time and not reporting the matter immediately. Therefore, we are conscious of the legal position that delay per se may not render prosecution case doubtful as there may be various reasons for lodging the FIR with some delay [See ***Sahebrao and another v. State of Maharashtra, (2006) 9 SCC 794***.] Thus, there is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. However, what is emphasised is that if that was so, it was necessary for the prosecution to at least come forward with the explanation as to why the complainant kept quiet and why he did not report the matter to the Police immediately. No such explanation is coming forward in the present case. Moreover, in the instant case, the

delay is seen as fatal when examined in juxtaposition with other material that has come on record and discussed above, which shakes the veracity of prosecution case, bringing it within the four corners of doubtful prosecution story.

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19 POINT INVOLVED

Sections 498-A & 306 of the Indian Penal Code, 1860 – How to run sentences where there is one trial and the accused is convicted in two or more offences? Held, section 31 Cr. P.C. gives full discretion to the court to order sentence for two or more offences in one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances – The discretion has to be exercised along the judicial lines and not mechanically – It is not a normal rule

to order the sentences to be consecutive and exception is to make the sentences concurrent.

Parties – ***O.M. Cherian alias Thankachan v. State of Kerala and others***

Reported in – AIR 2015 SC 303 (3-Judge Bench)

Under Section 31 Cr.P.C. it is left to the full discretion of the Court to order the sentences to run concurrently in case of conviction for two or more offenses. It is difficult to lay down any strait jacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for

concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offenses committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.

Accordingly, we answer the Reference by holding that Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offenses at one trial to run concurrently, having regard to the nature of offenses and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the Court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the Court may direct. We also do not find any conflict in earlier judgment in ***Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Asst. Collector of Customs (Prevention), Ahmedabad and anr., AIR 1988 SC 2143*** and Section 31 Cr.P.C.

20. POINT INVOLVED

Dowry – Meaning of the expression 'demand of dowry in connection with the marriage' cover demand of dowry at, before or after the marriage except any customary demand of such nature that would not attract on the face of it – Previous law regarding the meaning of 'dowry' elucidated.

Parties – *Ashok Kumar v. State of Haryana*

Reported in – AIR 2010 SC 2839

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'Dowry' means any property or valuable security given or agreed to be given either directly or indirectly by one party to another, by parents of either party to each other or any other person at, before, or at any time after the marriage and in connection with the marriage of the said parties but does not include dower or mahr under the Muslim Personal Law. All the expressions used under this Section are of a very wide magnitude. The expressions 'or any time after marriage' and 'in connection with the marriage of the said parties' were introduced by amending Act 63 of 1984 and Act 43 of 1986 with effect from 02.10.1985 and 19.11.1986 respectively. These amendments appear to have been made with the intention to cover all demands at the time, before and even after the marriage so far they were in connection with the marriage of the said parties. This clearly shows the intent of the legislature that these expressions are of wide meaning and scope. The expression 'in connection with the marriage' cannot be given a restricted or narrower meaning. The expression 'in connection with the marriage' even in common parlance and on its plain language has to be understood generally. The object being that everything, which is offending at any time i.e. at, before or after the marriage,

would be covered under this definition, but the demand of dowry has to be 'in connection with the marriage' and not so customary that it would not attract, on the face of it, the provisions of this section.

It will be appropriate to refer to certain examples showing what has and has not been treated by the Courts as 'dowry'. This Court, in the case of ***Ram Singh v. State of Haryana, (2008) 4 SCC 70 = AIR 2008 SC 1294*** held that the payments which are customary payments, for example, given at the time of birth of a child or other ceremonies as are prevalent in the society or families to the marriage, would not be covered under the expression 'dowry'. Again, in the case of ***Satbir Singh v. State of Punjab, AIR 2001 SC 2828***, this Court held that the word 'dowry' should be any property or valuable given or agreed to be given in connection with the marriage. The customary payments in connection with birth of a child or other ceremonies are not covered within the ambit of the word 'dowry'. This Court, in the case of ***Madhu Sudan***

Malhotra v. K.C. Bhandari, (1988) Supp 1 SCC 424, held that furnishing of a list of ornaments and other household articles such as refrigerator, furniture and electrical appliances etc., to the parents or guardians of the bride, at the time of settlement of the marriage, prima facie amounts to demand of dowry within the meaning of Section 2 of the Act. The definition of 'dowry' is not restricted to agreement or demand for payment of dowry before and at the time of marriage but even include subsequent demands, was the dictum of this Court in the case of ***State of Andhra Pradesh v. Raj Gopal Asawa, (2004) 4 SCC 470 = AIR 2004 SC 1933***.

The Courts have also taken the view that where the husband had demanded a specific sum from his father-in-law and upon not being given, harassed and tortured the wife and after some days she died, such cases would clearly fall within the definition of 'dowry' under this Act. Section 4 of the Act is the penal Section and demanding a 'dowry', as defined under Section 2 of the Act, is punishable under this Section.

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21. POINT INVOLVED

Section 2 of Dowry Prohibition Act, 1961 – No dowry – Demand for money due to financial stringency or meeting urgent domestic expenses – Accused demanding money for domestic expenses and purchase of manure – Cannot be convicted for dowry death.

Parties – ***Appasaheb & Anr. v. State of Maharashtra***

Reported in – AIR 2007 SC 763

Two essential ingredients of Section 304-B IPC, apart from others, are (i) death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) woman is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry". The explanation appended to sub-section (1) of Section 304-B IPC says that "dowry" shall have the same

meaning as in Section 2 of Dowry Prohibition Act, 1961. Section 2 of Dowry Prohibition Act reads as under :-

> "***2. Definition of "dowry***" – In this Act "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-
>
> (a) by one party to a marriage to the other party to the marriage; or
>
> (b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies."

In view of the aforesaid definition of the word "dowry" any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlatio between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well known social

custom or practice in India. It is well settled principle of interpretation of Statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have particular meaning in it, then the words are to be construed as having that particular meaning. (See ***Union of India vs. Garware Nylons Ltd. AIR 1996 SC 3509*** and ***Chemicals and Fibres of India vs. Union of India AIR 1997 SC 558***). A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for "dowry" as defined in Section 2 of the Dowry Prohibition Act was made by the appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure. Since an essential ingredient of Section 304-B IPC *viz*. demand for dowry is not established, the conviction of the appellants cannot be sustained.

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22. POINT INVOLVED

Section 3 of Dowry Prohibition Act, 1961 and Section 498-A of the Indian Penal Code, 1861 – Marriage performed in the year 1989 and death of the wife took place on 17.05.1999 on committing suicide – Letters wrote to the in-laws by the accused (husband) demanding Rs. 40,000/- persistently for purchasing the house – Wife subjected to mental and physical torture soon after two years of marriage and was also taunted by the accused for not bringing sufficient dowry at the time of marriage – Abetment of suicide not proved, as more active role, which can be described as "instigating" or "aiding" for abetment is required, but in view of the material on record,

particularly the letters on which specific emphasis has been laid by the Trial Court and High Court, amply demonstrate the commission of offence under Section 498-A IPC and Section 3 of the Dowry Prohibition Act

Parties – ***Kishangiri Mangalgiri Goswami v. State of Gujarat***

Reported in – (2009) 4 SCC 52

Section 306 IPC deals with abetment of suicide. The said provision reads as follows: '306 Abetment of Suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.' Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In

cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing it required before a person can be said to be abetting the commission of offence under Section 306 of IPC. In ***State of West Bengal v. Orilal Jaiswal, AIR 1994 SC 1418***, this Court has observed that the courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty. Section 107 IPC defines abetment

of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence. In cases of alleged abetment of suicide there

must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased wife with cruelty is not enough. [See ***Mahinder Singh v. State of M.P. (1995 AIR SCW 4570)***]. The aforesaid aspects were highlighted in ***Kishori Lal v. State of M.P., (2007) 10 SCC 797, Randhir Singh v. State of Punjab (2004) 13 SCC 129*** and ***Sohan Raj Sharma v. State of Haryana, (2008) 11 SCC 215.***

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*23. POINT INVOLVED

Sections 3 and 4 of Dowry Prohibition Act, 1961 and Section 498-A of Indian Penal Code, 1860 – Ingredients of Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act are different from the ingredient of Section 304-B IPC – Sections 304-B and 498-A IPC are both distinct and separate offences – "Cruelty" is a

common essential ingredient of both the offences – Under Section 304-B, it is the "dowry death" that is punishable and such death should have occurred within seven years of the marriage – In the statute, no such period is mentioned in Section 498-A IPC – The husband or his relative would be liable for subjecting the woman to "cruelty" any time after the marriage – The demand of dowry is an essential ingredient to attract Section 304-B IPC, whereas under Section 498-A IPC, the demand of dowry is not the basic ingredient of the offence – Therefore, even if there is acquittal under Section 304-B IPC, still conviction under Section 498-A can be recorded under the law. [Also see ***Shanti v. State of Haryana, (1991) 1***

SCC 371]. Section 3 of the Dowry Prohibition Act deals with penalty for giving and taking of dowry – The scope and ambit of Section 3 is different from the scope and ambit of Section 304-B IPC – Section 4 of the Dowry Act deals with penalty for demanding dowry, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be – The object of Section 4 is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto – Section 4 prohibits the demand for "giving" property or valuable security which demand, if satisfied, would constitute an offence under Section 3

read with Section 2 of the Act – Thus, the ambit and scope of Sections 3 and 4 of the Dowry Prohibition Act is different from the ambit and scope of Section 304-B of IPC.

Parties – ***State of Uttar Pradesh v. Santosh Kumar and others***

Reported in – (2009) 9 SCC 626

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*24. POINT INVOLVED

Section 4 & 6 of Dowry Prohibition Act, 1961 – Territorial jurisdiction – Offence punishable under Sections 4 and 6 of Dowry Prohibition Act, 1961 – Complainant married and resided at Bhopal and on account of cruelty by her in-laws, she left her matrimonial home at Bhopal and reached the house of her parents at Guna – Complaint filed before JMFC Guna – Held, entire cause of action or bundle of facts contained in the case accrued within the

territorial jurisdiction of criminal Court at Bhopal – So criminal court at Bhopal has exclusive jurisdiction to try the case and the Court of JMFC Guna has no jurisdiction to try the case.

Parties – ***Kirti Prakash Saxena v. State of M.P. and another***

Reported in – 2010 (2) MPHT 361

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25. POINT INVOLVED

Section 304-B of Indian Penal Code, 1860 and Section 2 of Dowry Prohibition Act, 1961 Dowry death – Meaning of dowry – Whether demand of motorcycle for the purpose of starting milk vending business

qualifies as a demand for dowry to constitute offence of dowry death? Held, Yes – If a demand for property or valuable security directly or indirectly has a nexus with marriage, such demand would constitute "demand for dowry"; cause or reason for such demand being immaterial.

Parties – ***Bachni Devi & anr. v. State of Haryana through Secretary, Home Department***

Reported in – AIR 2011 SC 1098

Section 304-B was inserted in IPC with effect from November 19, 1986 by the Dowry Prohibition (Amendment) Act, 1986 (for short, '(Amendment) Act, 1986)'. Thereby substantive offence relating to 'dowry death' was introduced in the IPC.

Pertinently, for the purposes of Section 304B IPC, 'dowry' has the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (for short, '1961 Act').

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1961 Act was enacted to prohibit the giving or taking of 'dowry' and for the protection of married woman against cruelty and violence in the matrimonial home by the husband and in-laws. The mere demand for 'dowry' before marriage, at the time of marriage or any time after the marriage is an offence. 1961 Act has been amended by the Parliament on more than one occasion and by the (Amendment) Act, 1986, Parliament brought in stringent provisions and provided for offence relating to 'dowry death'. The amendments became imperative as the dowry deaths continued to increase to disturbing proportions and the existing provisions in 1961 Act were found inadequate in dealing with the problems of dowry deaths. The definition of 'dowry' reproduced above would show that the term is defined comprehensively to include properties of all sorts as it takes within its fold 'any property or valuable security' given or agreed to be given in connection with marriage

either directly or indirectly. In ***S. Gopal Reddy v. State of A.P., AIR 1996 SC 2184*** this Court stated as follows :

> "9. The definition of the term 'dowry' under Section 2 of the Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become 'dowry' punishable under the Act. Property or valuable security so as to constitute 'dowry' within the meaning of the Act must therefore be given or demanded "as consideration for the marriage".
>
> 11. The definition of the expression 'dowry' contained in Section 2 of the Act cannot be confined merely to the 'demand' of money, property or valuable security "made at or after the performance of marriage" as is urged by Mr. Rao. The legislature has in its wisdom while providing for the definition of 'dowry' emphasized that any money, property or valuable security given, as a consideration for marriage, "before, at or after" the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. Meaning of the expression 'dowry' a commonly used and understood is different than the peculiar definition there of under the Act. Under Section 4 of the Act, mere demand of 'dowry' is sufficient to bring home the offence to an accused. Thus, any 'demand' of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives or

> vice versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognised claim and is relatable only to the consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfilment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all. The expression 'dowry' under the Act must be interpreted in the sense which the statute wishes to attribute to it …… The definition given in the statute is the determinative factor. The Act is a piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage. Dowry as a *quid pro quo* for marriage is prohibited …… . "

While dealing with the term 'dowry' in Section 304B IPC, this Court in the case of ***Kamesh Panjiyar alias Kamlesh Panjiyar v. State of Bihar AIR 2005 SC 785***, held as under :

> "14. The word "dowry" in Section 304-B IPC has to be understood as it is defined in Section 2 of the Dowry Act. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending period. But the crucial words are "in connection with the marriage of the said parties". As was observed in the said case "suicidal death" of a married woman within seven years of her marriage is covered by the expression "death of a woman is caused ….. or occurs otherwise than under normal circumstances" as expressed in Section 304-B IPC."

Learned counsel for the appellants heavily relied upon the following observations made by this Court in the case of ***Appasaheb & anr. v. State of Maharashtra, AIR 2007 SC 763*:**

> "A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood."

The above observations of this Court must be understood in the context of the case. That was a case wherein the prosecution evidence did not show 'any demand for dowry' as defined in Section 2 of the 1961 Act. The

allegation to the effect that the deceased was asked to bring money for domestic expenses and for purchasing manure in the facts of the case was not found sufficient to be covered by the 'demand for dowry'. *Appasaheb* (supra) cannot be read to be laying down an absolute proposition that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as 'demand for dowry'. It was in the facts of the case that it was held so. If a demand for property or valuable security, directly or indirectly, has a nexus with marriage, in our opinion, such demand would constitute 'demand for dowry'; the cause or reason for such demand being immaterial.

26. POINT INVOLVED

Ss. 2 (q), 12, 18, 31 & 32 of Protection of Women from Domestic Violence Act, 2005

* Expression 'complaint' appearing in S. 2 (q) of the Act, meaning of – Law explained.
* Protection order – Can be passed u/s 18 of the Act only – Breach thereof amounts to an offence and is punishable u/s 31 of the Act.
* Application u/s 12 of the Act – Not maintainable against ladies.

Parties – ***Ajay Kant and others v. Smt. Alka Sharma***

Reported in – 2007 (4) MPHT 62

As provided by Section 2 (q) of the Act, such application under Section 12 of the Act cannot be filed against the petitioner Nos. 3 & 4 who are the ladies. In Section 2 (q) of the Act the term respondent has been defined as under :-

> "(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:
> Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."

Thus, it is provided by this definition that an application can be filed by an aggrieved person including the respondent claiming relief under the Act only against the adult male person. However, as per the proviso appended

to this provision, a wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner.

Section 31 of the Act provides penalty for breach of protection order passed by the Magistrate, which is punishable as an offence. A protection order can only be passed under Section 18 of the Act.

The word "complaint" as appeared in the definition of respondent under Section 2 (q) of the Act has not been defined anywhere in the Act Although it is not provided that the definition of complaint can be considered the same as provided under the Cr.P.C. but at the same time it is also not prohibited. In view of this, the definition of complaint can appropriately be seen in Cr.P.C. which goes as under :-

> "2. (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

It is clear by this definition that a complaint as provided in Cr.P.C. can only be for an offence. As mentioned hereinabove only two offences have been mentioned in this Act and those are (1) under Section 31 and (2) under Section 33. It appears that this word "complaint" appeared in the definition of respondent has been used for initiating proceedings for

those two offences and an aggrieved wife or female living in a relationship in the nature of a marriage has been given a right to file a complaint against a relative of the husband or the male partner. This word complaint cannot be considered beyond the scope of the main provision of this Section which has been defined in first part of Section 2 (q) that is for any relief under this Act. As provided in Section 31 of the Act, a complaint can be filed against a person who has not complied with a protection order or interim protection order.

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27. POINT INVOLVED

Ss. 2 (q), 12 (1) and 19 of Protection of Women from Domestic Violence Act, 2005

* Application under S. 12 of the Act – Respondent, who may be – Only adult male member may be a respondent – Female cannot be impleaded as respondent**.**
* Right of residence, claim of – Right of residence can be claimed in respect of shared house belonging to husband or house belonging to joint family of which husband is a member.

Parties – *Tehmina Qureshi v. Shazia Qureshi*

Reported in – 2010 (1) MPHT 133

It is contended by learned Counsel for the petitioner that as per section 2 (q) of the Act, it is crystal clear that an application can be filed by an aggrieved person including the respondent claiming relief under the Act only against the adult male person. However, as per the proviso appended to this proviso, a wife or female living in relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

Learned Counsel for the petitioner drew this Courts attention to a citation ***Ajay Kant Sharma and others v. Smt. Alka Sharma, 2008 (2) Crimes***

235, in which, a Bench of this Court has held that application for seeking one or more relief under the Act of 2005 can be filed only against adult male person. Relying that citation, it is further urged that in the present case, petitioner against whom. The application is filed under Section 12 of the Act is not adult male person, therefore, proceedings initiated against her and application filed against her is not maintainable. It is urged on behalf of the petitioner that considering the view expressed in above citation, the petitioner

being a lady, proceedings initiated against her in Cr. Case No. 2694 of 2009 be quashed.

Learned Counsel for the respondent vehemently opposed the application and submitted that while disposing of the application under sub-section (1) of Section 12 of the Act of 2005, Magistrate may on being satisfied that domestic violence has taken place, pass a residence order.

It is submitted that the above proviso of Section 19 would indicate that the only embargo against the passing of residence order while disposing of an application under Section 12 (1) of the Act is that if the respondent is a woman the Magistrate shall not direct such woman respondent to remove herself from the shared household. In other words if the respondent to the application is a woman, the Magistrate can grant all the reliefs against such woman in an application under Section 12 (1) of the Act except directing such woman respondent to remove herself from the shared household. Hence, it is urged that the petitioner is also liable under Section 12 of the Act of 2005 and proceedings are not liable to be quashed.

Learned Counsel's argument is based on a citation ***Remadevi v. State of Kerala, I (2009) DMC 297***, in which, it is held by Kerala High Court that "aggrieved person" under Section 12 of the Act can file application not only against adult male relatives including husband but also against any female relatives. Term "respondent" appearing in Section 12 takes within its fold not only adult male. It is further observed that on bare perusal of Section 19 of the Act and the proviso, it is apparent that Magistrate can grant all the relief against woman also in an application filed under Section 12(1) of the Act except

directing such woman respondent to remove herself from shared household. So Act is applicable to female also.

So far as citation of Kerala High Court cited by learned Counsel for the respondent is concerned, with due respect, I find myself unable to agree with the decision of Kerala High Court. Application for seeking one or more relief under the Act can be filed against adult male member only as is apparent from Section 2 (q) of the Act wherein, it is specifically mentioned that

'respondent means only adult male person. It is apparent that complaint against relative of husband cannot include female members. In case of ***Smt. Menakuru Renuka and other v. Menakuru Mona Reddy and another, 2009 Cri.L.J. (NOC) 819 (AP) = AIR 2009 (NOC) 1544 (AP)***, similar view is expressed that in view of the contents of Section 2 (q) of the Act of 2005 female members of the domestic relationship have to be excluded, as the word used in Section 2 (q) of the Act is that respondent means any adult male person. The words used are not like that 'respondent' means any adult person. So complaint against relatives of husband cannot include female members. Female members cannot be made respondents in proceedings under the Protection of Women from Domestic Violence Act, 2005.

It is well known that Protection of Women from Domestic Violence Act, 2005 came into force from 26th October, 2006, Vide S.O. 1776 (E), dated 17th October, 2006 published in Gazette of India, Extra, Pt. II and this Act is to provide more effective protection to the rights of woman guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for members connected therewith or incidentally thereof. The Act is applicable against male persons who can be respondent.

In case of ***Razzaq Khan vs. Shahnaz Khan, 2008 (4) M.P.H.T. 413 = ILR (2008) M.P. 963***, it is held that wife is entitled to a right of residence in a shared house belonging to husband or house which belongs to joint family of which, husband is a member. In ***Vimlaben Ajitabhai Patel v. Vatslaben Ashok Bhai Patel and other, (2008) 4 SCC 649*** **and** ***S.R. Batra v. Tarun Batra, (2007) 3 SCC 169***, Apex Court has held that even wife could not

claim right of residence in the property belonging to her mother-in-law that means protection order cannot be passed against mother-in-law. Wife is only entitled to the residence order which extends only to joint property in which, husband has a share.

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28. POINT INVOLVED

Section 2(q) of Domestic Violence Act, 2005 – 'Respondent' – Interpretation of the expression – Whether a female member of the husband's family could be made a party to the proceedings under the Domestic Violence Act, 2005 – The trial Court observed that female members cannot be made parties in proceedings under the Domestic Violence Act, 2005, as "females" are not included in the definition of "respondent" in Section 2(q) of the said Act – The learned Single Judge confirmed the said order relating to deletion of the names of the `other members' – Appeal – The Supreme Court held that if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner – No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only – Impugned orders of the lower Courts set aside – The

trial Court is directed to proceed against the said Respondent Nos.2 and 3 on the complaint filed by the Appellant – Appeal allowed.

Parties – ***Sandhya Manoj Wankhade v.Bhimrao Wankhade & Ors.***

Reported in – (2011) 3 SCC 650

Questioning the said judgment and order of the Nagpur Bench of the Bombay High Court, Mr. Garvesh Kabra, learned Advocate appearing for the Appellant, submitted that the High Court had erred in confirming the order of the learned Sessions Judge in regard to deletion of names of the Respondent Nos. 2 and 3 from the proceedings, upon confirmation of the finding of the Sessions Judge that no female could be made a party to a petition under the Domestic Violence Act, 2005, since the expression "female" had not been included in the definition of "respondent" in the said Act. Mr. Kabra submitted that it would be evident from a plain reading of the proviso to Section 2(q) of the Domestic Violence Act, 2005, that a wife or a female living in a relationship in the nature of marriage can, not only file a complaint against her husband or male partner but also against relatives of the husband or male partner. The term "relative" not having been defined in the Act, it could not be said that it excluded females from its operation.

Mr. Satyajit A. Desai, learned Advocate appearing for the Respondents, on the other hand, defended the orders passed by the Sessions Judge and the High Court and urged that the term "relative" must be deemed to include within its ambit only male members of the husband's family or the family of the male partner. Learned counsel submitted that when the expression "female" had not been specifically included within the definition of "respondent" in Section 2(q) of the Domestic Violence Act, 2005, it has to be

held that it was the intention of the legislature to exclude female members from the ambit thereof.

Having carefully considered the submissions made on behalf of the respective parties, we are unable to sustain the decisions, both of the learned Sessions Judge as also the High Court, in relation to the interpretation

of the expression "respondent" in Section 2(q) of the Domestic Violence Act, 2005. For the sake of reference, Section 2(q) of the above-said Act is extracted hereinbelow :-

> "2(q). "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:
> Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."

From the above definition it would be apparent that although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only.

In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.

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29. POINT INVOLVED

‘Live-in-relationship’ – ‘Wife’, meaning of Human & Civil Rights – S. 2 (f) of Protection of Women from Domestic Violence Act, 2005
‘Relationship in the nature of marriage’ – Essential conditions constituting such relationship – Live-in relationship as recognised in some jurisdictions in USA – Scope and its applicability in India – ‘Keep’ –Whether relationship with her is in the nature of marriage –‘Relationship in the nature of marriage’, held, is akin to a common law marriage which *inter alia* requires that the parties must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time – The parties should also have a ‘shared household’ as defined in Section 2(s) of the Act – Merely spending weekends or one night together does not constitute ‘domestic relationship under Section 2 (f) of the Act – Further held, not all live-in relationships form a relationship ‘in the nature of marriage’ because several parameters have to be satisfied in order to constitute relationship in the nature of marriage – Lastly, held, a relationship with ‘keep’ whom a man uses for sexual purposes and/or as a servant, does not constitute relationship in the nature of marriage.

Parties – *D. Velusamy v. D. Patchaiammal*

Reported in – (2010) 10 SCC 469

The expression ‘domestic relationship’ in Section 2 (f) of the Domestic Violence Act, 2005 includes not only the relationship of marriage but

also a relationship in the nature of marriage. Parliament has drawn a distinction between the relationship of marriage and a relationship in the marriage, and has provided that in either case, the person who enters into either relationship is entitled to the benefit of the Act. Parliament has taken notice of a new social phenomenon which has emerged in India known as live-in relationship. This new relationship is still rare in India, and is sometimes found in big urban cities in India, but it is very common in North America and Europe.

When a wife is deserted, in most countries the law provides for maintenance to her by her husband, which is called alimony. However, earlier there was no law providing for maintenance to a woman who was having a live-in relationship with a man without being married to him and was then deserted by him.

A 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married: (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 significant period of time.* A 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2 (s) of the Act. Merely spending weekends together or one night would not make it a 'domestic relationship'.

Not all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned above must be satisfied and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purposes and/or as a servant, it would not be a relationship in the nature of marriage.

No doubt, the view being taken in this case would exclude many women who have had a live-in relationship from the benefit of the 2005 Act, but then it is not for the Supreme Court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live-in relationship'. The Court in the garb of interpretation cannot change the language of the statute.

There is no finding in the judgment of the Family Court Judge on the question whether the appellant and the respondent had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. Such findings were essential to decide this case. The matter is remanded to the Family Judge for decision on this issue.

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30. POINT INVOLVED

Ss. 2 (s) of Protection of Women from Domestic Violence Act, 2005 – Claim for alternative accommodation – Can be made against husband only.

Parties – ***S. R. Batra and another v. Taruna Batra (Smt.)***

Reported in – (2007) 3 SCC 169

There is no such law in India like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.

* * *

Apart from the above, we are of the opinion that the house in question cannot be said to be a "shared household" within the meaning of Section 2 (s) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act"). Section 2(s) states :

"2. (s) 'shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic

relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;"

Learned counsel for the respondent.... has relied upon Sections 17 and 19 (1) of the aforesaid Act, which state :

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

* * *

19. (1) While despising of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order–

(a) restraining the respondents from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
(b) directing the respondent to remove himself from the shared household;
(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;
(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or
(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman."

Learned counsel for the respondent ..... stated that the definition of shared household includes a household where the person aggrieved lives or

at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.

If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces, etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

* * *

Learned counsel for the respondent ..... has relied upon Section 19(1)(f) of the Act and claim that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's (sic) in-laws or other relatives.

As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of Appellant 2, mother of Amit Batra. Hence it cannot be called a "shared household".

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31. POINT INVOLVED

Ss. 12, 18 & 28 of Protection of Women from Domestic Violence Act, 2005, Rules 6 (5) & 15 (6) of Protection of Women from Domestic Violence Rules, 2006 and S. 126 of CrPC – Application under S. 12 of the Act, procedure therefor – The application is to be dealt with and order enforced in the same manner as laid down under S.125 of CrPC – A Magistrate must provide opportunity of hearing to the parties – It is also expected from him to record the evidence of the parties – Further held, before passing a protection order under S. 18 of the Act, a Magistrate is required to *prima facie* satisfy himself as to the fact that domestic violence is likely to happen.

Parties – *Madhusudan Bhardwaj & ors. v. Mamta Bhardwaj*

Reported in – 2009 (III) MPJR 47

It is true that nowhere in the Act any direction with regard to receiving or recording of evidence of the parties has specifically been mentioned. While inserting the provision with regard to procedure, subsection (1) of Section 28 of the Act a general and wide mandate has been given that all the proceedings under Sections 12,18,19,20,21,22 and 23 of the Act (including Section 12 of the Act also) shall be governed by the provisions of Code of Criminal Procedure, 1973. The word 'shall' gives a mandate that the procedure as laid down in Cr. P.C. shall have to be followed. It is also true that in Cr. P.C. for various type of cases different procedures have been mentioned e.g. in; (1) Chapter VIII, which deals with security for keeping the peace and for good behavior, (2) Chapter IX, which deals with order for maintenance of wives, children and parents, (3) Chapter X, which deals with maintenance of public order and tranquility, and (4) Chapter XVIII to Chapter XXIA, which provide

different procedures for trial of different offences. But, at the same time the Legislature in its wisdom has inserted Section 37 in the Act vesting powers with the Central Government to make Rules for carrying out different provisions of the Act. Sub-section (2) of Section 37 indicates that the Rule making power of the Central Government is very wide, in which it is provided that – in particular and without prejudice to the generality of the foregoing powers, such Rules may provide for all or any of the following matters, namely, (a) to (m…)

Thus, although in clause (a) to (1) some subjects have been enumerated on which the Rules may be framed by the Central Government,. But at the same time it is also mentioned that this illustration of the subjects will not prejudice the generality of the powers given to the Central Government for framing Rules to carry out the provisions of the Act. This intention of the Legislature is further visible by perusing clause (m) which provides that – rules may be framed on any other matter which has to be, or may be prescribed. Under Section 37 of the Act, the Rules are framed which been published in the Gazette of India, Extra Pt. II, Sec 3 (i), dated 17th October, 2006, vide G.S.R. No. 644 (E), dated 17th October, 2006. Thus, these Rules framed by the Central Government are having statutory force and shall require to be given effect to. Although vide sub-section (3) of Section 37 of the Act the parliament can amend or disagree with the Rules, yet unless such amendment or disagreement comes in existence, the operation of these Rules will remain in force and have to be effective. Perhaps considering the ambiguous situation, that in Section 28 (1) of the Act the Legislature has given a mandate to follow the procedure as laid down in Cr. P.C., but the same has not been clarified as to what procedure will be adopted in dealing with the application under Section 12 of the Act, the Rule 6(5) has been framed. It appears that now the ambiguity has been removed by Rule 6 (5) in further mandatory words by mentioning, that the application under Section 12 shall be dealt with and order enforced in the same manner as laid down under Section 125 of Cr.P.C.

As observed by the three different Benches of High Court in the cases of ***Het Ram v. Smt. Ram Kumari, 1975 Cri. L.J 656, Sankarasetty Pompanna v. State of Karnataka & Anr., 1977 Cri.L.J 2072*** and ***Pendiyala***

Sureshkumar Ramarao v. Sompally Arunbindu & Anr., 2005 Cri.L.J. 1455 without providing opportunity of leading evidence such application cannot be disposed of. Similar is the procedure required to be adopted to deal with an application under Section 12 of the Act to comply the direction under Section 28 (1) of the Act read with Rules 6 (5) of the Rules.

In view of the aforementioned mandate, the learned magistrate was required to comply with the provisions of this sub-rule read with Section 28(1) of the Act and was required to follow the procedure as laid down in the Code of Criminal Procedure for the application under Section 125 of Cr. P.C. Admittedly, that has not been followed. On this ground, the impugned order appears erroneous.

It is also true, that sub-section (2) of Section 28 provides, that nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 of the Act. By cumulative reading of Section 28 sub-sections (1) and (2) of the Act and Rule 6 (5) of the Rules, it appears that sub-section (2) of Section 28 of the Act appears to have been enacted looking to the peculiar nature of the Act and also the existence of aforementioned ambiguity with regard to the provisions of Section 28 (1) of the Act, but now that ambiguity has been removed by the Central Government under its powers given by Section 37 of the Act.

Without coming to a certain and justified conclusion, passing a protection order under Section 18 of the Act in favour of the applicant may some time cause injustice to the opposite party/respondent who may be not at fault, but in reality a victim of the misdeed or misbehavior of the applicant. That is not and cannot be the intention, of the Legislature in enacting the Act. No doubt the intention of the Legislature behind enacting the Act is to provide more protection to the rights of women guaranteed under the Constitution who are victims of violence of any kind within the family and for matters connected therewith or incidental therewith. It is clear that the Act has been enacted for

safeguarding the rights of a woman guaranteed under the Constitution and to provide protection against her victimization from domestic violence, interpretation of the provisions keeping this pious principle in mind is required. However, this principle cannot be accepted that in domestic violence always a woman is a victim or suffer party. There may be cases where by misusing the sympathetic and favourable attitude of the society or law framers, male partners may be harassed and thereafter if Court of law gives a second push to the male partner, it may cause disorder in the society. In my considered opinion, at the time of administering such laws the Courts are required to be vigilant enough in deciding the dispute as to which part of the family is a victim of the domestic violence. In view of this also, passing orders merely on the basis of the documents, without their formal proof and upon hearing the arguments has not been permitted by the law and in judicial process it ought not to be permitted and leaning attitude towards one party of the *lis* is required to be avoided.

It is true that the opening words of the Section 18 are that-'the Magistrate may, after giving the aggrieved person and respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place pass a protection order in favour of the aggrieved person and prohibit the respondent from …..' On perusal, two things are required before passing an order in favour of the aggrieved person; (1) opportunity of hearing to the parties, and (2) on being prima facie satisfied with regard to happening of the domestic violence or likely to happen thereof. For being prima facie satisfied some material is required. As observed hereinabove and as provided in Rule 6 (5) evidence is required as the same is required for disposal of an application under Section 125 of Cr. P.C. It cannot be accepted that only upon providing an opportunity of hearing such orders are required to be passed.

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32. POINT INVOLVED

S. 12 Proviso of Protection of Women from Domestic Violence Act, 2005 – Whether Magistrate can take cognizance of application filed by the aggrieved person without calling the D.I.R. from Protection Officer or the service provider – Held, Yes.

Parties – ***Arif Ahmad Quraishi (Dr.) v. Smt. Shajia Quraishi***

Reported in – 2010 (II) MPJR 284

The proviso to Section 12 of the Act provides that before passing any order on the application filed under Section 12 (1) of the Act, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer. In this case, admittedly, the Protection order has not so far been passed and it is yet to be passed. The contention of the learned counsel for the petitioner is that the application itself should not have been taken cognizance in the absence of the domestic incident report from the Protection Office. A reading of Section 12 of the Act does not warrant such an interpretation. Nowhere, it is provided in the Act that even for taking cognizance of the application filed by the aggrieved person, the receipt of the domestic incident report from the Protection Officer is a condition precedent. Therefore, the contention of the learned counsel for the petitioner is untenable and does not merit acceptance.

As stated above, this Act being a beneficent piece of legislation enacted for providing minimum relief to an aggrieved person affected by domestic violence, even if there is any minor procedural deviation such minor procedural deviation being technical in nature, need not be taken serious note off and on that ground, the proceedings pending under the Act cannot be quashed.

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*33. POINT INVOLVED

S. 19 (1) (f) of Protection of Women from Domestic Violence Act, 2005 – Alternate accommodation or to pay rent for the same – The claim for alternate accommodation can only be made against husband – Wife is entitled to a right of residence in a shared house belonging to husband or house which belongs to joint family of which husband is a member.

Parties – ***Razzak Khan v. Shahnaz Khan***

Reported in – I.L.R (2008) M.P. 963

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34. POINT INVOLVED

Ss. 23 and 31 of Protection of Women from Domestic Violence Act, 2005 and Rules 5 and 6 of Protection of Women from Domestic Violence Rules, 2006 – Whether breach of order of interim maintenance under S. 23 of the Act is punishable under S. 31 of the Act? Held, Yes, as it amounts to breach of protection order.

Parties – ***Sunil @ Sonu v. Sarita Chawla (Smt.)***

Reported in – 2009 (5) MPHT 319

The interim order passed by the learned Trial Court regarding the payment of maintenance has attained finality. The only question, which requires consideration is whether the interim order passed by the learned Trial Court, whereby the maintenance was awarded is a protection order and on account of breach of protection order, the proceedings can be initiated against the petitioner under Section 31 of the Act. Section 18 of the Act empowers the Court for passing a protection order against a respondent, who commits any act of domestic violence. In exercise of the powers conferred by Section 37 of the

Act the Central Govt. has framed the Rules. As per Rule 6 every application of the aggrieved person under Section 12 of the Act is required to be filed in Form 11. Sub-clause III of Form No.1 deals with economic violence according to which not providing money for maintaining of food, clothes, medicine etc. is amounting to the economic violence for which the Court is empowered to pass a protection order. As per sub-section (1) of Section 28 of the Act the proceedings are required to be governed by the provisions of Cr.P.C. As per sub-section (2) of Section 28, the Court is not prevented from laying down its own procedure for disposal of an application of Section 12 of the Act. In the facts and circumstances of the case where no amount of maintenance has been paid by the petitioner, no illegality was committed by the learned Trial Court in initiating the proceedings under Section 31 of the Act.

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35. POINT INVOLVED

Sections 17 and 19 (1)(f) of Protection of Women from Domestic Violence Act, 2005 – 'Shared household' meaning of – A house belonging to husband or taken on rent by husband or house belonging to Hindu undivided family of which husband is a member is shared household.

Parties – *S. R. Batra and another v. Taruna Batra (Smt.)*

Reported in – (2007) 3 SCC 169
(Note: Also see Note No. 30)

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36. POINT INVOLVED

Ss. 17 & 20 of Protection of Women from Domestic Violence Act, 2005, Ss. 4, 18 & 19 of Hindu Adoptions and Maintenance Act, 1956 and S. 82 (2) of Criminal Procedure Code, 1973

* Ss. 17 & 20 of Protection of Women from Domestic Violence Act provides for a higher right in favour of wife – She secures the right to be maintained and right of residence but it extends only to joint property in which husband has a share.
* S.4 of Hindu Adoptions and Maintenance Act provides for a *non obstante clause* so any objection on the part of in-laws or wife, in terms of any text, rules or interpretation of Hindu Law or any custom or usage as part of law before the commencement of the Act are no longer valid – Ss. 18 and 19 of the Act prescribes the statutory liabilities in regard to maintenance of wife by her husband which is personal obligation and only on his death upon the father-in-law – Such an obligation can also be made from the properties of which the husband is a co-sharer and not otherwise – Mother-in-law cannot be fastened with any legal liability to maintain her daughter-in-law from her own property or otherwise.
* Right of a person as a tenant could not be affected by reason of any order of attachment u/s 82 of CrPC – He cannot be evicted except in accordance with law.

Parties – V*imlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel and others*

Reported in – (2008) 4 SCC 649

(i) The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share. Interpreting the provisions of the Domestic Violence Act this Court in ***S.R. Batra v. Taruna Batra, (2007) 3 SCC 169*** held that even a wife could not claim a right of residence in the property belonging to her mother-in-law.

(ii) Section 4 of the Hindu Adoption and Maintenance Act, 1956 provides for a *non obstante* clause. In terms of the said provision itself any obligation on the part of in-laws in terms of any text, rule or interpretation of Hindu Law or any custom or usage as part of law before the commencement of the Act, are no longer valid. In view of the *non obstante* clause contained in Section 4, the provisions of the Act alone are applicable. Sections 18 and 19 prescribe the statutory liabilities in regard to maintenance of wife by her husband and only on his death upon the father-in-law. Mother-in-law, thus, cannot be fastened with any legal liability to maintain her daughter-in-law from her own property or otherwise. Maintenance of a married wife, during subsistence of marriage, is on the husband. It is a personal obligation. The obligation to maintain a daughter-in-law arises only when the husband has died. Such an obligation can also be met from the properties of which the husband is a co-sharer and not otherwise. For invoking the said provision, the husband must have a share in the property. The property in the name of the mother-in-law can neither be a subject matter of attachment nor during the life time of the husband, his personal liability to maintain his wife can be directed to be enforced against such property.

In ***Unnamalai Ammal v. F.W. Wilson, AIR 1927 Mad. 1187*** the obligation to maintain wife by a husband has been held to be a personal

obligation. This Court in ***Kirtikant D. Vadodaria v. State of Gujarat, (1996) 4 SCC 479*** has held as under (SCC p. 485 para 8):-

> "…… According to the Law of the Land with regard to maintenance, there is an obligation of the husband to maintain his wife which does not arise by reason of any contract, express or implied, but out of jural relationship of husband and wife consequent to the performance of marriage. Such an obligation of the husband to maintain his wife arises irrespective of the fact whether he has or has no property, as it is considered an imperative duty and a solemn obligation of the husband to maintain his wife."

(iii) An order of attachment of a property has nothing to do with the right of tenancy. The terms and conditions of tenancy, being governed by statute, the tenant cannot be evicted except in accordance with law.

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37. POINT INVOLVED

Sections 2(s), 12 (1), 17 and 19 (1) of Protection of Women from Domestic Violence Act, 2005

'Shared household', what it is? A 'shared household' would only mean the house belonging to or taken on rent by the husband or the house which belongs to the joint family of which the husband is a member – Exclusive and self-owned property of mother-in-law of petitioner does not come within the sweep of 'shared household'.

Parties – ***Smt. Jyoti Parihar v. Munindra Singh Parihar and another***

Reported in – 2011 (3) MPHT 531

In the case of ***S.R. Batra v. Taruna Batra, AIR 2007 SC 1118***, the Apex Court held: –

> "29. As regards Section 17 (1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.
> 30. No doubt, the definition of 'shared household' in Section 2 (s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society."

The property in question in the present case neither belongs to respondent No. 1-Munindra Singh Parihar, husband of the petitioner, who is at present working in Indian Army nor was it taken on rent by him nor is it a joint family property of which the respondent No. 1-Munindra Singh Parihar (husband) is a member. It is the exclusive property of Smt. Parihar, the mother of respondent No. 1-Munindra Singh Parihar, who is not a party in criminal proceedings before the Trial Magistrate or the Appellate Court in the appeal. It is true that Smt. Saroj Parihar is wife of Surendra Singh, father of respondent No. 1-Munindra Singh Parihar, i.e., husband of the petitioner. It is also true that the alleged house was constructed on plot purchased by Smt. Saroj Parihar on Home Loan taken from HDFC Bank on 28th March 2002. The loan amount was paid from the salary of Surendra Singh Parihar, an army personal. Hence, under the circumstances, noticed above, the property cannot be called a 'shared household' having owned or in the share of the respondents. In other words, it is the exclusive and self owned property of Smt. Saroj Parihar, mother of the respondent No. 1. Statement of respondent No. 1-Munindra Singh, being party to the proceedings is necessary for the decision of the petition. During pendency of the petition, the Trial Magistrate may, with consent of the petitioner, direct the respondents to make available same level of alternative accommodation for the petitioner Jyoti Parihar as enjoyed by her in the house where she lived or in alternative it may be directed to pay the rent for the same as may be determined by the Magistrate. The order of the Court in this regard may be enforced by the respondents by executing the bond with or without securities by them.

Hence, by affirming the order passed by the Appellate Court, the revision petition is disposed of with the above directions.

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38. POINT INVOLVED

Sections 3, 12, 18 & 19 of Protection of Women from Domestic Violence Act, 2005

* Whether a woman is entitled to protection provided by the Act even if the cause of action arose prior to coming into force of the Act? Held, Yes – Looking into a complaint u/s 12 of the Act, the conduct of parties even prior to the enforcement of the Act could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof – Hence, a wife who had a shared household in the past but had left it prior to the enforcement of the Act, would still be entitled to protection under the Act.

* Under Section 19 of the Act, a woman is entitled for a suitable portion of the shared household for her residence alongwith all necessary amenities to make such residential premises properly habitable for her – It should also be properly furnished according to the choice of the woman entitled, to enable her to live in dignity in the shared household.

Parties – ***V. D. Bhanot v. Savita Bhanot***

Reported in – 2012 AIR SCW 1515

Before the Delhi High Court, the only question which came up for determination was whether the petition under the provisions of the

PWD Act, 2005, was maintainable by a woman, who was no longer residing with her husband or who was allegedly subjected to any act of domestic violence prior to the coming into force of the PWD Act on 26th October, 2006. After considering the constitutional safeguards under Article 21 of the Constitution, *vis-à-vis*, the provisions of Sections 31 and 33 of the PWD Act, 2005, and after examining the statement of objects and reasons for the enactment of the PWD Act, 2005, the learned judge held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that the Parliament enacted the PWD Act, 2005, in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them. The learned Judge accordingly held that a petition under the provisions of the PWD Act, 2005, is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force.

We agree with the view expressed by the High Court that in looking into a complaint under Section12 of PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.

On facts it may be noticed that the couple has no children. Incidentally, the Respondent wife is at present residing with her old parents, after she had to vacate the matrimonial home, which she had shared with the Petitioner at Mathura, being his official residence, while in service. After more

than 31 years of marriage, the Respondent wife having no children, is faced with the prospect of living alone at the advanced age of 63 years, without any

proper shelter or protection and without any means of sustenance except for a sum of Rs. 6,000 which the Petitioner was directed by the Magistrate by order dated 8th December, 2006, to give to the Respondent each month. By a subsequent order dated 17th February, 2007, the Magistrate also passed a protection-cum-residence order under Sections 18 and 19 of the PWD Act, protecting the rights of the Respondent wife to reside in her matrimonial home in Mathura. Thereafter, on the Petitioner's retirement from service, the Respondent was compelled to vacate the accommodation in Mathura and a direction was given by Magistrate to the Petitioner to let the Respondent live on the 1st Floor of House No. D-279, Nirman Vihar, New Delhi, and if that was not possible, to provide a sum of Rs. 10,000 per month to the Respondent towards rental charges for acquiring an accommodation of her choice.

In our view, the situation comes squarely within the ambit of Section 3 of the PWD Act, 2005, which defines "domestic violence" in wide terms, and, accordingly, no interference is called for with the impugned order of the High Court. However, considering the fact that the couple is childless and the Respondent has herself expressed apprehension of her safety if she were to live alone in a rented accommodation, we are of the view that keeping in mind the object of the Act to provide effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family, the order of the High Court requires to be modified. We, therefore, modify the order passed by the High Court and direct that the Respondent be provided with a right of residence where the Petitioner is residing, by way of relief under Section 19 of the PWD Act, and we also pass protection orders under Section 18 thereof. As far as any monetary relief is concerned, the same has already been provided by the learned Magistrate and in terms of the said order, the Respondent in receiving a sum of Rs 6,000 per month towards her expenses.

Accordingly, in terms of Section 19 of the PWD Act, 2005, we direct the Petitioner to provide a suitable portion of his residence to the Respondent for her residence, together with all necessary amenities to make such residential

premises properly habitable for the Respondent, within 29th February, 2012. The said portion of the premises will be properly furnished according to the choice of the Respondent to enable her to live in dignity in the shared household. Consequently, the sum of Rs. 10,000 directed to be paid to the Respondent for obtaining alternative accommodation in the event the Petitioner was reluctant to live in the same house with the Respondent, shall stand reduced from Rs. 10,000 to Rs. 4,000, which will be paid to the Respondent in addition to the sum of Rs. 6,000 directed to be paid to her towards her maintenance. In other words, in addition to providing the residential accommodation to the Respondent, the Petitioner shall also pay a total sum of Rs. 10,000 per month to the Respondent towards her maintenance and day-to-day expenses.

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39. POINT INVOLVED

Whether a judgment and decree of a competent civil court can be declared null and void in collateral proceedings? Held, No – Application under Section 12 of Act of 2005, maintainability of – The application was filed on 12.06.2009 after dissolution of marriage by decree of mutual consent on 20.03.2008 – It was alleged in the application that the decree was null and void because it was obtained by fraud and they continued to live together as husband and wife – A civil case was also filed for declaration that the decree was null and void

– Held, the applicant was not in domestic relationship with non applicant because the decree for divorce still subsists hence the

application amounts to abuse of process of court and not maintainable.

Parties – ***Inderjit Singh Grewal v. State of Punjab***

Reported in – 2011 AIR SCW 6259

In ***M. Meenakshi & Ors. v. Metadin Agarwal (Dead) by LRs. & Ors., II (2007) SLT 146 = I (2007) CLT 290 (SC) = (2006) 7 SCC 470***, this Court considered the issue at length and observed that if the party feels that the order passed by the Court or a statutory authority is *non est* / void, he should question the validity of the said order before the appropriate Forum resorting to the appropriate proceedings. The Court observed as under:

> "It is well settled principle of law that even a void order is required to be set aside by a competent Court of Law, inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in collateral proceedings and that too in the absence of the authorities who were the authors thereof."
>
> (Emphasis added)

Similar view has been reiterated by this Court in ***Sneh Gupta v. Devi Sarup & Ors., (2009) 6 SCC 194***.

From the above, it is evident that even if a decree is void *ab initio,* declaration to that effect has to be obtained by the person aggrieved from the competent Court. More so, such a declaration cannot be obtained in collateral proceedings.

In the facts and circumstances of the case, the submission made on behalf of respondent No. 2 that the judgment and decree of a Civil Court granting divorce is null and void and they continued to be the husband and wife, cannot be taken note of at this stage unless the suit filed by the respondent

No. 2 to declare the said judgment and decree dated 20.30.2008 is decided in her favour. In view thereof, the evidence adduced by her particularly the record of the telephone calls photographs attending a wedding together and her

signatures in school diary of the child cannot be taken into consideration so long as the judgment and decree of the Civil Court subsists. On the similar footing, the contention advanced by her Counsel that even after the decree of divorce, they continued to live together as husband and wife and therefore the complaint under the Act, 2005 is maintainable, is not worthier acceptance at this stage.

In ***D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469***, this Court considered the expression "domestic relationship" under Section 2 (f) of the Act, 2005 placing reliance on earlier judgment in ***Savitaben Somabhai Bhatiya v. State of Gujarat & Ors., (2005) 3 SCC 636***, and held that relationship "in the nature of marriage" is akin to a common law marriage. However, the couple must hold themselves out to society as being akin to spouses in addition to fulfilling all other requisite conditions for a valid marriage.

The said judgments are distinguishable on facts as those cases relate to live-in relationship without marriage. In the instant case, the parties got married and the decree of Civil Court for divorce still subsists. More so, a suit to declare the said judgment and decree as a nullity is still pending consideration before the competent Court.

In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions' of the Act, 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the Court. Undoubtedly, for quashing a complaint, the Court has to take its contents on its face value and in case the same discloses an offence, the Court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the Court to proceed with the

complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.

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40. POINT INVOLVED

Sections 12, 18 and 19 of Protection Of Women From Domestic Violence Act, 2005 – Application u/s 12 of the Act – It was alleged that non-applicants ill-treated and forcibly threw her out from her matrimonial home – No evidence was led on behalf of the applicant to prove domestic violence in terms of Sections 18 and 19 of the Act which is required to be proved for the purpose of seeking relief u/s 12 of the Act – Court below rightly rejected the application.

Parties – ***Smt. Santosh Kunwar v. Yogendra and another***

Reported in – 2011 (5) MPHT 205

In so far as the statement made by the pertitioner is concerned, in her statement there was contradiction with regard to the date of her marriage as in the petition she pleaded that her marriage took place 11 years back whereas in the statement she stated that her marriage took place 5-6 years back. She also stated in here statement that after her marriage she stayed in her matrimonial home at Sarvan, in addition to that she only deposed that the respondent Gopal Singh, who is father-in-law of the petitioner was not giving her husban's share in the joint family property and that of after the death of her husband she was also beaten and ill-treated by them and forcibly thrown out from her matrimonial home. But even with respect to the aforesaid allegations, she has not been able to lead any evidence.

She also stated that her jewellery was with the respondents, but to prove this that her jewellery was in possession of the respondent

nothing has been led on behalf of the petitioner. In the cross-examination she also stated that before her, Shailendra Singh was married to some other lady who was not alive but she denied the adoption of Ratandeep Singh by late Shailendra Singh and his first

wife, but no evidence has been led that Ratandeep Singh was not adopted by them. She was also unable to place on record any document which may go to support her contentions. She also admitted that she never reported to Police or anyone else about ill treating her by her in-laws. She denied that the last rites of Shailendra Singh was done by Ratandeep Singh but, simply brushed aside the photographs shown to her.

The second witness examined by her namely—Smt. Sampat Kunwar has not given any proof about the harassment with the petitioner by respondent. She is a married woman and sister-in-law of the petitioner, but it has not made clear as to how she was aware of the alleged cruelty caused to the petitioner and that when she was thrown out from the matrimonial house after the death of her husband Shailendra Singh.

On the other hand, the evidence led by the respondents is consistent. The said evident goes to prove that Shailendra Singh was earlier married with another lady and Ratandeep Singh was the adopted son of late Shailendra Singh and his first wife.

In these circumstances, in the absence of any evidence led on behalf of the petitioner in support of her case and cruelties made by her in-laws, the petitioner was not entitled to any benefit that also after four years of the death of Shailendra Singh in which period she was living separately.

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41. POINT INVOLVED

Sections 1 (3) and 3 of Protection Of Women From Domestic Violence Act, 2005 – Operation of the Act – The Act has

no retrospective effect – As the Act was enforced from 26th October 2006, incidents of cruelty occurred before the date are not covered by the Act.

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Parties – ***Devkaran v. Smt. Sanjana Bai***

Reported in – 2012(4) M.P.H.T. 104

It is submitted that in so far as the allegation of cruelty is concerned, they are already a subject matter of proceeding under Section 125 of Cr.PC, whereas the fresh application made with respect to allegation, dated 6th of June, 2006, the Court of JMFC have not taken cognizance since those allegations are prior to the Act. They also relied upon the judgment of this Court delivered in the matter of ***Shyamlal s/o Jagannath and another v. Kantabai d/o Badrilal,*** dated 29th of April, 2009, passed in M.Cr.C. No. 3876/2008. In the said judgment, it has been observed that :-

> "So far as M.Cr.C. No. 3876/2008 is concerned since the respondent is living separately prior to coming into force of the Domestic Violence Act, which came in force with effect from 26.10.2006 and the same is not having the retrospective effect, is allowed and the impugned order dated 4.4.2008 passed in Criminal Revision No. 1087/2007 and the order dated 10.10.2007 passed by JMCF in Cri. Case No. 61/2007 and complaint filed by respondents stands quashed."

Another judgment also relied upon by the petitioner is the judgment delivered in the case of ***Navin s/o Ramkishore Marmat***, dated 2.3.2009 passed in M.Cr.C. No. 6741/2008, where also the Court taking note of the submission of the petitioner regarding the allegations made prior to coming into force of the Act, made following observations:-

> "After going through the complaint, it cannot be said that the offence was continuing even after 6.6.2006. If that would have been the position, then, there was no

need to mention that the offence was between 12.11.2005 to 6.6.2006. In view of this, the petition filed by the petitioner is allowed and the impugned order dated 24.09.2008 passed by learned JMFC, Indore in Criminal Case No. 2/2008, whereby the application filed by the petitioners for quashment of the proceedings initiated against the petitioners for the offence punishable under

Sections 9 and 37 of the Act, 2005 and the criminal proceeding pending before the learned Trial Court stands dropped."

Learned Counsel appearing for the responsent has relied upon the judgment delivered by Gauhati High Court in rebuttal. In the case of ***Bulu Das (Smt.) v. Ratan Das, 2009 Femi-Juris CC 942 (Gauhati)***, it has been observed that:-

"Taking into consideration the submission of the learned Counsels appearing for the parties and keeping in view the ratio laid down by the Apex Court in ***Vanka Radhamanohari case*** (supra) and ***Deokaran Nenshi case*** (supra) this Court is of the considered view that there is a continuing cause of action for filing the said case, i.e., No. 81-M/2006 before the learned SDJM, Dibrugarh, by the present petitioner wife. Admittedly, the Protection of Women from Domestic Violence Act, 2005 came into force on 26.10.2006 vide S.O. 1776(E), dated 17.10.2006. Since, there is continuing cause of action for the reasons discussed above, this Court is of the firm view that the provisions of the said Act, 2005 are attracted to the present case; and accordingly, the petitioner-whife filed the said case, i.e., Misc. Case No. 81-M/2006 under the Act, 2005."

However, in the present case, the allegations are very specific, i.e., the allegation of cruelty caused upon the respondent/complainant on 6th of June, 2006. Such allegation cannot be taken as continuing for the purpose of confirming the jurisdiction to the Court.

Consequently, present petition is allowed and the order passed by the Sessions Judge and the Court of JMFC Directing continuing further proceedings of complaint filed by the respondent are set aside and it is ordered that the complaint by the respondent on the ground of allegation made regarding her going to matrimonial

home of the petitioner on 6th of June, 2006 are quashed on the ground of jurisdiction.

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42. POINT INVOLVED

Sections 12 of Protection Of Women From Domestic Violence Act, 2005 – Order as to relief under the Act – Magistrate has to take into consideration D.I.R. prepared by Protection Officer before passing such an order.

Parties – ***Shri Rama Singh v. Smt. Maya Singh and others***

Reported in – 2012 (4) MPHT 169

The averments made in the application suggest that during the preceding period of nearly 10 years, the respondent had been subjected to cruelty and harassment inter alia for the under-mentioned reasons -

(i) Caste-difference.
(ii) Non-satisfaction of the dowry demand for a sum of ` 20 lacs.
(iii) Inability to beget a male child.

However, fact of the matter is that the application filed on 2.11.2011 by the respondent neither contains details of any recent incident of domestic violence, as defined in Section 3 of the Act, nor, furnishes any explanation for non presentation of the application at an earlier point of time despite the fact that the Act has been brought into force on 26/10/2006. Further, the order dated 12.1.2012, does not indicate as to what was there in the report of Protection Officer that weighed with learned Magistrate in directing issuance of notice to secure presence of the petitioners on 30.1.2012.

It is, therefore, apparent that the impugned order was passed without taking into consideration the report prepared by the Protection Officer, ignoring the proviso to Section 12, that reads thus –

> "Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider".

The proviso ordinarily carves out an exception from the general rule enacted in the main provision. It is also well settled that the word 'any' would mean one or more out of several and includes all (See: ***Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement AIR 2010 SC 2239***). In this view of the matter, even an interlocutory order directing issuance of notice would not be excluded from the rigour of the proviso. Accordingly, learned Magistrate ought to have passed a reasoned order holding that *prima facie* a case existed for asking the petitioners as to why the reliefs, as claimed in the application, should not be granted.

In the ordinary course, the matter would have been remanded for recording a reasoned order, but, I refrain from doing so simply because even if the allegations made against the petitioners in the application, are taken at their face value and accepted in their entirety, no justification for initiation of action against them would be made out in view of the admitted fact that during the relevant period, they were residing separately from the respondent. As such, the matter falls under categories (1), (5) and (7) of the cases, as enumerated in ***State of Haryana v. Bhajan Lal, AIR 1992 SC 604,*** attracting interference under the inherent powers.

For these reasons, the petition stands allowed and the proceedings in MJC No.314/11 (above) are hereby quashed.

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43. POINT INVOLVED

Sections 12 of Protection of Women from Domestic Violence Act, 2005 and section 11 of Hindu Marriage Act, 1955 –

Appellant wife seeking certain reliefs including damages and maintenance under section 12 of the P.W.D.V. Act, 2005 – Husband opposing the claim on the ground that at the time of their marriage the wife had another spouse living – The husband also produced a certificate regarding earlier marriage of wife issued by the competent authority under Section 13 of the Special Marriage Act, 1954– Fact of earlier marriage was denied by the wife – Until the declaration of invalidation of the marriage between the appellant wife and the respondent husband is made by a competent Court under section 11 of the Hindu Marriage Act, 1955, the Magistrate shall proceed on the basis that the appellant continues to be the wife of the respondent – Appellant wife is entitled to claim all benefits and protection available under the PWDV Act, 2005.

Parties – ***Deoki Panjhiyara v. Shashi Bhushan Narayan Azad and Anr.***

Reported in – AIR 2013 SC 346

Though Section 11 of the aforesaid Act (Hindu Marriage Act, 1955) gives an option to either of the parties to a void marriage to seek a declaration of invalidity/nullity of such marriage, the exercise of such option cannot be

understood to be in all situations voluntarily. Situations may arise when recourse to a Court for a declaration regarding the nullity of a marriage claimed by one of the spouses to be a void marriage, will have to be insisted upon in departure to the normal rule. Thus when appellant wife has disputed the fact of her first marriage. This, in our view, is the correct ratio of the decision of this

Court in ***Yamunabai v. Anant Rao (AIR 1988 SC 644)*** and ***M.M. Malhotra v. Union of India (AIR 2006 SC 80)***. In this regard, we may take note of a recent decision rendered by this Court in ***A. Subash Babu v. State of Andhra Pradesh & Anr (AIR 2011 SC 3031)***. While dealing with the question whether the wife of a second marriage contracted during the validity of the first marriage of the husband would be a "person aggrieved" under section 198 (1)(c) of the Code of Criminal Procedure to maintain a complaint alleging commission of offences under sections 494 and 495, IPC by the husband. The passage extracted below effectively illuminates the issue:-

> "Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of Section 494, IPC and would be entitled to maintain a complaint against her husband."

In the present case, if according to the respondent (husband), the marriage between him and the appellant (wife) was void on account of the previous marriage between the appellant and Rohit Kumar Mishra the respondent ought to have obtained the necessary declaration from the competent Court in view of the highly contentious questions raised by the appellant on the aforesaid score. It is only upon a declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a "relationship in the nature of marriage" would be justified. In the absence of any valid decree of nullity or the necessary

declaration the Court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage. We would also like to emphasise that any determination of the validity of the marriage between the parties could have been made only by a competent Court in an appropriate proceeding by and between the parties and in compliance

with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the Courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent Court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV ACT, 2005.

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*44. POINT INVOLVED

Sections 12, 19, 20 and 22 of Protection Of Women From Domestic Violence Act, 2005 – Sections The claim of wife for alternative accommodation under the Act can only be made against the husband and not against the in-laws or other relatives – Wife is entitled to a right of residence in a shared house in which husband has a share. [***S.R. Batra and Anr. v. Taruna Batra, 2007 Cr.L.R. (SC) 113*** and ***Tehmina Qureshi v. Shazia Qureshi, 2010 (1) MPHT 133*** relied on]

Parties– ***Meenakshi Jatav (Smt.) and Ors. v. Dr. Smt. Seema Sehar and anr.***

Reported in – ILR (2013) M.P. 729

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45. POINT INVOLVED

Sections 5 & 7 of Hindu Marriage Act, 1955 and Sections 5 & 7 of Protection of Women from Domestic Violence Act, 2005

- Relationship in the nature of marriage and marital relationship – Distinction – Relationship of marriage continues, notwithstanding the fact that there are differences of opinion, marital unrest etc., even if they are not sharing a shared household, being based on law – But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage – Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end – Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the Legislature has used the expression "in the nature of".
- Relationship of same sex (gay or lesbians) is not recognised by the

Act – Hence, any act, omission, commission or conduct of any of the party would not lead to domestic violence, entitling any relief under the DV Act.

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- Guidelines for testing a relationship to fall within the expression relationship in the nature of marriage u/s 2(f) of the DV Act – (i) Duration of period of relationship (ii) Shared household (iii) Pooling of resources and financial arrangements (iv) Domestic arrangements (v) Sexual relationship (vi) Children (vii) Socialization in public (viii) Intention and conduct of the parties.

Parties – ***Indra Sarma v. V.K.V. Sarma***

Reported in – 2013 (III) DMC 830 (SC)

Entering into a marriage, therefore, either through the Hindu Marriage Act or the Special Marriage Act or any other Personal Law, applicable to the parties, is entering into a relationship of "public significance", since marriage being a social institution, many rights and liabilities flow out of that legal relationship. The concept of marriage as a "civil right" has been recognised by various Courts all over the world, for example, ***Skinner v. Oklahoma, 316 US 535 (1942); Perez v. Lippold, 198 P.2d 17, 20.1 (1948); Loving v. Virginia, 388 US 1 (1967)***.

We have referred to, ***in extenso***, about the concept of "marriage and marital relationship" to indicate that the law has distinguished between married and unmarried people, which cannot be said to be

unfair when we look at the rights and obligations which flow out of the legally wedded marriage. A married couple has to discharge legally various rights and obligations, unlike the case of persons having live-in relationship or, marriage-like relationship or defacto relationship.

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Married couples who choose to marry are fully cognizant of the legal obligation which arises by the operation of law on solemnization of the marriage and the rights and duties they owe to their children and the family as a whole, unlike the case of persons entering into live-in relationship. This Court in ***Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 2 SCALE 198,*** held that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on.

Relationship in the Nature of Marriage :

Modern Indian society through the DV Act recognizes in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:

(a) Consanguinity

(b) Marriage

(c) Through a relationship in the nature of marriage

(d) Adoption

(e) Family members living together as joint family.

The definition clause mentions only five categories of relationships which exhausts itself since the expression “means”, has been used. When a definition clause is defined to “mean” such and

such, the definition is ***prima facie*** restrictive and exhaustive. Section 2(f) has not used the expression "include" so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression "relationship in the nature of marriage".

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We have already dealt with what is "marriage", "marital relationship" and "marital obligations". Let us now examine the meaning and scope of the expression "relationship in the nature of marriage" which falls within the definition of Section 2(f) of the DV Act. Our concern in this case is of the third enumerated category that is "relationship in the nature of marriage" which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.

Distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the Legislature has used the expression "in the nature of".

Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

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(a) Domestic relationship between an unmarried adult woman and an unmarried adult male **–** Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

(b) Domestic relationship between an unmarried woman and a married adult male **–** Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the DV Act.

(c) Domestic relationship between a married adult woman and an unmarried adult male **–** Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship "in the nature of marriage".

(d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male **–** An unmarried woman unknowingly enters into a relationship with a

married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the “nature of marriage”, so far as the aggrieved person is concerned. (e) Domestic relationship between same sex partners (Gay and Lesbians): DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship

in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

Section 2 (f) of the DV Act though uses the expression “two persons”, the expression “aggrieved person” under Section 2(a) takes in only “woman”, hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act.

We should, therefore, while determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence”, have a common sense/balanced approach, after weighing up the various factors which exist in a particular relationship and then reach a conclusion as to whether a particular relationship is a relationship in the “nature of marriage”. Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage. The expression “relationship in the nature of marriage”, of

course, cannot be construed in the abstract, we must take it in the context in which it appears and apply the same bearing in mind the purpose and object of the Act as well as the meaning of the expression "in the nature of marriage". Plight of a vulnerable section of women in that relationship needs attention. Many a times, the women are taken advantage of and essential contribution of women in

a joint household through labour and emotional support have been lost sight of especially by the women who fall in the categories methtioned in (a) and (d), supra. Women who fall under categories (b) and (c), stand on a different footing, which we will deal with later. In the present case, the appellant falls under category (b), referred to in paragraph 37(b) of the judgment.

We have, therefore, come across various permutations and combinations, in such relationship, and so test whether a particular relationship would fall within the expression "relationship in the nature of marriage", certain guiding principles have to be evolved since the expression has not been defined in the Act.

Section 2(f) of the DV Act defines "domestic relationship" to mean, inter alia, a relationship between two persons who live or have lived together at such point of time in a shared household, through a relationship in the nature of marriage. The expression "relationship in the nature of marriage" is also described as ***de facto*** relationship, marriage – like relationship, cohabitation, couple relationship, meretricious relationship (now known as committed intimate relationship) etc.

Courts and Legislatures of various countries now began to think that denying certain benefits to a certain class of persons on the basis of their marital status is unjust where the need of those benefits is felt by both unmarried and married cohabitants. Courts in various countries have extended certain benefits to heterosexual

unmarried cohabitants. Legislature too, of late, through legislations started giving benefits to heterosexual cohabitants.

Live-in relationship, as such, as already indicated, is a relationship which has not been socially accepted in India, unlike many other countries. In ***Lata Singh v. State of U.P., AIR 2006 SC 2522,*** it was observed that a live-in relationship between two consenting adults of heterosexual sex does not amount to any offence

even though it may be perceived as immoral. However, in order to provide a remedy in Civil Law for protection of women, from being victims of such relationship, and to prevent the occurrence of domestic violence in the society, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related by consanguinity, marriage etc. We have few other legislations also where reliefs have been provided to woman placed in certain vulnerable situations.

Section 125 Cr.P.C., of course, provides for maintenance of a destitute wife and Section 498A IPC is related to mental cruelty inflicted on women by her husband and in-laws. Section 304-B IPC deals with the cases relating to dowry death. The Dowry Prohibition Act, 1961 was enacted to deal with the cases of dowry demands by the husband and family members. The Hindu Adoptions and Maintenance Act, 1956 provides for grant of maintenance to a legally wedded Hindu wife, and also deals with rules for adoption. The Hindu Marriage Act, 1955 refers to the provisions dealing with solemnization of marriage also deals with the provisions for divorce. For the first time, through, the DV Act, the Parliament has recognized a “relationship in the nature of marriage” and not a live-in relationship simplicitor.

We have already stated, when we examine whether a relationship will fall within the expression “relationship in the nature of marriage” within the meaning of Section 2(f) of the DV Act, we

should have a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. We cannot isolate individual factors, because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree,

whether a relationship between two unrelated persons of the opposite sex meets the tests judicially evolved.

We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships.

(1) Duration of period of relationship

Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

(2) Shared household

The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

(3) Pooling of Resources and Financial Arrangements

Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

(4) Domestic Arrangements

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking,

maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

(5) Sexual Relationship

Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

(6) Children

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(7) Socialization in Public

Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(8) Intention and conduct of the parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

We may note, in the instant case, there is no necessity to rebut the presumption, since the appellant was aware that the respondent was a married person even before the commencement of their relationship, hence the status of the appellant is that of a mistress, who cannot enter into relationship in the nature of a marriage. Long standing relationship as a concubine, though not a relationship in the nature of a marriage, of course may at times, deserves protection because that woman might not be financially independent, but we are afraid that DV Act does not take care of such relationships which may perhaps call for an amendment of the definition of Section 2(f) of the DV Act, which is restrictive and exhaustive.

D. Velusamy v. D. Patchaimmal, (2010) 10 SCC 4690 stated that instances are many where married person maintain and support such types of women, either for sexual pleasure or sometimes for emotional support. Woman, a party to that relationship does suffer social disadvantages and prejudices, and historically, such a person has been regarded as less worthy than the married woman. Concubine suffers social ostracism through the denial of status and benefits,

who cannot, of course, enter into a relationship in the nature of marriage.

We cannot, however, lose sight of the fact that inequities do exist in such relationships and on breaking down of such relationship, the woman invariably is the sufferer. Law of Constructive Trust developed as a means of recognizing the contributions, both pecuniary and non-pecuniary, perhaps comes to their aid in such situations, which may remain as a recourse for such a woman who find herself unfairly disadvantaged. Unfortunately, there is no express statutory provision to regulate such types of live-in relationships upon termination or disruption since those relationships are not in the nature of marriage. We can also come across situations where the parties entering into live-in-relationship and due to their joint efforts or otherwise acquiring properties, rearing children, etc. and disputes may also arise when one of the parties dies intestate.

Such relationship, it may be noted, may endure for a long time and can result pattern of dependency and vulnerability, and increasing number of such relationships, calls for adequate and effective protection, especially to the woman and children born out of that live-in-relationship. Legislature, of course, cannot promote pre-marital sex, though, at times, such relationships are intensively personal and people may express their opinion, for and against. [See ***S. Khushboo v. Kanniammal and another (2010) 5 SCC 600***].

We may now consider whether the tests, we have laid down, have been satisfied in the instant case. We have found that the appellant was not ignorant of the fact that the respondent was a married person with wife and two children, hence, was party to an adulterous and bigamous relationship. Admittedly, the relationship between the appellant and respondent was opposed by the wife of the respondent, so also by the parents of the appellant and her brother and sister and they knew that they could not have entered into a legal marriage or

maintained a relationship in the nature of marriage. Parties never entertained any intention to rear children and on three occasions the pregnancy was terminated. Having children is a strong circumstance to indicate a relationship in the nature of marriage. No evidence has been adduced to show that the parties gave each other mutual support and companionship. No material has been produced to show that the parties have ever projected or conducted themselves as husband and wife and treated by friends, relatives and others, as if they are a married couple. On the other hand, it is the specific case of the appellant that the respondent had never held out to the public that she was his wife. No evidence of socialization in public has been produced. There is nothing to show that there was pooling of resources or financial arrangements between them. On the other hand, it is the specific case of the appellant that the respondent had never opened any joint account or executed any document in the joint name. Further, it was also submitted that the respondent never permitted to suffix his name after the name of the appellant. No evidence is forthcoming, in this case, to show that the respondent had caused any harm or injuries or endangered the health, safely, life, limb or well- being, or caused any physical or sexual abuse on the appellant, except that he did not maintain her or continued with the relationship.

Alienation of Affection

Appellant had entered into this relationship knowing well that the respondent was a married person and encouraged bigamous relationship. By entering into such a relationship, the appellant has committed an intentional tort, i.e. interference in the marital relationship with intentionally alienating respondent from his family, i.e. his wife and children. If the case set up by the appellant is accepted, we have to conclude that there has been an attempt on the part of the appellant to alienate respondent from his family, resulting

in loss of marital relationship, companionship, assistance, loss of consortium etc., so far as the legally wedded wife and children of the respondent are concerned, who resisted the relationship from the very inception. Marriage and family are social institutions of vital importance. Alienation of affection, in that context, is an intentional tort, as held by this Court in ***Pinakin Mahipatray Rawal case*** (supra), which gives a cause of action to the wife and children of the respondent to sue the appellant for alienating the husband/father from the company of his wife/children, knowing fully well they are legally wedded wife/children of the respondent.

We are, therefore, of the view that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in-relationships are not relationships in the nature of marriage. Appellant's and the respondent's relationship is, therefore, not a "relationship in the nature of marriage" because it has no inherent or essential characteristic of a marriage, but a relationship other than "in the nature of marriage" and the appellant's status is lower than the status of a wife and that relationship would not fall within the definition of "domestic relationship" under Section 2(f) of the DV Act. If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently,

any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to "domestic violence" under Section 3 of the DV Act.

We have, on facts, found that the appellant's status was that of a mistress,who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also

suffer most which calls for bringing in remedial measures by the Parliament, through proper legislation.

We are conscious of the fact that if any direction is given to the respondent to pay maintenance or monetary consideration to the appellant, that would be at the cost of the legally wedded wife and children of the respondent, especially when they had opposed that relationship and have a cause of action against the appellant for alienating the companionship and affection of the husband/parent which is an intentional tort.

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46. POINT INVOLVED

Sections 2(g), 3 and 3 Expln. I (iv) (c) of Protection of Women from Domestic Violence Act, 2005

- What is domestic violence and continuing domestic violence? Despite various orders, if husband disobeys the court orders, that is continuing domestic violence by the husband against his wife
- Conduct of parties prior to DV Act, 2005 can be taken into consideration – Wife having been harassed since 2005, entitled for

protection order along with maintenance as allowed by Trial Court – She is also entitled for damages for injuries including mental torture and emotional distress – Husband directed to pay compensation and damages of Rs. 5 lac.

Parties – ***Saraswathy v. Babu***

Reported in – (2014) 3 SCC 712

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Section 2 (g) of DV Act, 2005 states that "domestic violence" has the same meaning as assigned to it in Section 3 of DV Act, 2005. Section 3 is the definition of domestic violence. Clause (iv) of Section 3 relates to "economic abuse" which includes prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the explanation in domestic relationship including access to the shared household as evident from clause (iv) (c) of Section 3.

In the present case, in view of the fact that even after the order passed by the Subordinate Judge the respondent-husband has not allowed the appellant-wife to reside in the shared household, matrimonial house, we hold that there is a continuance of domestic violence committed by the respondent-husband against the appellant-wife. In view of the such continued domestic violence, it is not necessary for the courts below to decide whether the domestic violence is committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and whether such act falls within the definition of the term 'Domestic Violence' as defined under Section 3 of the DV Act, 2005.

The other issue that whether the conduct of the parties even prior to the commencement of the DV Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 fell for consideration before this Court in ***V.D. Bhanot v. Savita***

Bhanot, (2012) 3 SCC 183. In the said case, this Court held as follows:

> "12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the DV Act, 2005, the conduct of the parties even prior to the coming into force of the DV Act, could be taken into consideration while passing an order under Section 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the DV Act, 2005,"

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We are of the view that the act of the respondent-husband squarely comes within the ambit of Section 3 of the DV Act, 2005, which defines "domestic violence" in wide term. The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force DV Act, 2005 cannot be taken into consideration while passing an order. This is a case where the respondent-husband has not complied with the order and direction passed by the Trial Court and the Appellate Court. He also misleads the Court by giving wrong statement before the High Court in the contempt petition filed by the appellant-wife. The appellant-wife having being harassed since 2000 is entitled for protection orders and residence orders under Section 18 and 19 of the DV, Act, 2005 along with the maintenance as allowed by the Trial Court under Section 20 (1) (d) of the DV, Act, 2005. Apart from these reliefs, she is also entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent-husband. Therefore, in addition to the reliefs granted by the courts below, we are of the view that the appellant-wife should be compensated by the respondent-husband. Hence, the respondent is hereby directed to pay compensation and damages to the extent of Rs. 5,00,000/- in favour of the appellant-wife.

The order passed by the High Court is set aside with a direction to the respondent-husband to comply with the orders and directions passed by the courts below with regard to residence and maintenance within three months. The respondent-husband is further directed to pay a sum of Rs. 5,00,000/- in favour of the appellant-wife within six months from the date of this order. The appeal is allowed with aforesaid observations and directions. However, there shall be no separate order as to costs.

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47. POINT INVOLVED

Sections 12 (Proviso) & 28 (2) of Protection of Women from Domestic Violence Act, 2005, Section 200 of the Criminal Procedure Code, 1973 and Interpretation of Statutes.

Whether calling for and consideration of the domestic incident report, if not available at the time of issuance of notice on an application under section 12 of the Act, is mandatory? Held, No – If it is available, the Magistrate shall take into consideration before issuing the notice on that application – ***Shri Ram Singh v. Smt. Maya Singh and others, 2012 (4) MPHT 169*** explained – ***Ajay Kant Sharma and others v. Smt. Alka Sharma, 2008 CriLJ 264*** held to be *per incurium* in light of judgment of the Apex Court in the case of ***Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another, AIR 2010 SC 2239***.

Parties –*Ravi Kumar Bajpai and another v. Smt. Renu Awasthy Bajpai*

Reported in – ILR (2016) MP 302

In view of the foregoing, the precise questions in the case called upon to answer is to whether the report of the Protection Officer or the Service Provider, if not available is obligatory to call at the time of issuance of notice on the application under Section 12 of the Domestic Violence Act, or its consideration is mandatory on availability of such report?

In view of the foregoing discussion and the ambiguity arose by the judgment of ***Ajay Kant Sharma and others v. Smt. Alka Sharma, 2008 CriLJ 264, Tehmina Qureshi v. Shazia Qureshi, 2010 (1) MPHT 133*** and

Shri Ram Singh v. Smt. Maya Singh, 2012 (4) MPHT 169 is hereby explained that the judgment of ***Ajay Kant Sharma*** (supra) incorporating the meaning of "any order"which means final order is held to be per incuriam in the light of the judgment of Apex Court in the case of ***Raj Kumar Shivhare v. Assistant Director, Directorate of Enforcement and another, AIR 2010 SC 2239*** and to such extent the judgment of Shri Ram Singh (supra) is held to be good. Simultaneously the finding recorded that it is not necessary to the Magistrate to consider the report of the Protection Officer or Service Provider before issuance of the notice is also not held to be good. But the findings in the said case holding that it is not obligatory for a Magistrate to call for the report at the stage of taking cognizance, may be held to be good and in consonance to the spirit of the Act. In fact, if the report of the Protection Officer or Service Provider is available then its consideration is obligatory even at the stage of issuance of notice or at the time of passing final order as the case may be, affording opportunity to other side. It may be explained by example that under Section 12 on behalf of the aggrieved person if any application is filed by the Protection Officer or Service Provider attaching a report then it is obligatory on the Magistrate to consider the same at the time of issuance of summons but in case the complaint is filed by the complainant without having report then Magistrate is not bound to call for or await the report of the Protection Officer, and defer the proceeding awaiting the report before passing an order taking cognizance. Simultaneously, it is to be further held that in ***Tehmina Qureshi*** (supra)

relying upon the judgment of ***Ajay Kant Sharma*** (supra) the interpretation of Section 2(q) made by this Court is against the judgment of Hon'ble Apex Court in the case of ***Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and others, 2011 Cri.L.J. 1687***. In view of the discussion made hereinabove the judgment of Ajay Kant Sharma (supra) is held to be per incuriam, except on the point that calling of the report from the Protection Officer at the stage of taking cognizance is not obligatory.

In consequence to the above discussion and on plain reading of Section 12 of the Domestic Violence Act, as a whole the complaint can be

presented by an aggrieved person, Protection Officer or Service Provider before the Magistrate seeking one or more reliefs as specified under Sections 18, 19, 20, 21, 22, 23 and 31. Upon filing of such an application, the procedure enumerated in Code of Criminal Procedure, 1973 be followed and the Court is not prevented from laying down its own procedure for disposal of an application under Section 12 or sub-section (2) of Section 23. On plain reading of proviso attached to Section 12(1), it is clear that before passing any order on such application under sub-section (1) of Section 12, if the report of Protection Officer is available, the Magistrate shall take into consideration. Thus, word used "the Magistrate shall take into consideration" is only with respect to a report if it is available and not to call for it at the time of taking cognizance. However, the obligation of a Magistrate is only to the extent to consider the report if available with a view to affording an opportunity to other side.

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48. POINT INVOLVED

Sections 3 &12 of the Protection of Women from Domestic Violence Act, 2005 – Application under section 12 of the Act of 2005 has been filed by the wife in the year 2007 – Couple has started living separately since 1992 – Whether such application is

maintainable? Held, Yes, moreso where maternal uncle with whom wife was living is no more ready to allow her to stay in his house [***V. D. Bhanot v. Savita Bhanot, AIR 2012 SC 965*** relied on].

Parties – *Shalini v. Kishor and others*

Reported in – 2015 CriLJ 3610 (SC)

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49. POINT INVOLVED

Sections 2(a), 2(f), 2(g), 3(iv) & 12 of the Protection of Women from Domestic Violence Act, 2005

- Whether claim for return of *stridhan* is maintainable under section 12 of the Act of 2005 though decree of judicial separation has been passed? Held, Yes – In judicial separation, relationship of husband and wife continues – Depriving wife from stridhan is a continuous offence
- What is stridhan? Explained.

Parties – *Krishna Bhatacharjee v. Sarathi Choudhury & anr.*

Reported in – 2015 (4) Crimes 384 (SC)

Stridhana property is the exclusive property of the wife on proof that she entrusted the property or dominion over the stridhana property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. Further, the Court observed that it is always a question of fact in each case as to how the property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out

therefrom. Thereafter, the Court adverted to the concept of entrustment and eventually concurred with the view in the case of ***Pratibha Rani v. Suraj Kumar, AIR 1985 SC 628***. It is necessary to note here that the question had arisen whether it is a continuing offence and limitation could begin to run everyday lost its relevance in the said case, for the Court on scrutiny came to hold that the complaint preferred by the complainant for the commission of the criminal breach of trust under Section 406 of the Indian Penal Code was within limitation.

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Having appreciated the concept of Stridhan, we shall now proceed to deal with the meaning of "continuing cause of action".

In ***Raja Bhadur Singh v. Provident Fund Inspector and others, (1984) 4 SCC 222***, the Court while dealing with the continuous offence opined that the expression "continuing offence" is not defined in the Code but that is because the expressions which do not have a fixed connotation or a static import are difficult to define. The Court referred to the earlier decision in ***State of Bihar v. Deokaran Nenshi, (1972) 2 SCC 890*** and reproduced a passage from the same which is to the following effect:-

> "A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offenceonce and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

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PART-V

NOTES ON JUDICIAL

PRONOUNCEMENTS OF OTHER HIGH COURTS

1. POINT INVOLVED

S. 2(f) – Domestic relationship– 'Respondent'– Impleadment of – Unless aggrieved person substantiates that person concerned has got domestic relationship or that he is family member – Such person cannot be mechanically impleaded as one of respondents in application filed under Act.

Parties – ***K. Viswanathan v. Sivamalar***

Reported in – 2010 CriLJ (NOC) 448 (Mad).

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2. POINT INVOLVED

S. 2(q) – Relatives of husband or male partner referred to in proviso to S. 2(q) – Cannot be only male relatives but can be female relatives also.

Parties – ***Archana Hemant Naik v. Urmilaben I. Naik & Anr.***

Reported in – 2010 CriLJ 751 (Bom.)

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3. POINT INVOLVED

S. 2(q) Proviso – Complaint of domestic violence– Female relative of husband can also be joined as respondent – Word 'respondent' in S. 2 (q) does not necessarily means only male members. ***2008 Cri. LJ 264 (MP): AIR 2009 (NOC) 2841 (Cal)*** and ***AIR 2009 (NOC) 1544 (AP),*** Diss. from.

Parties – ***Jaydipsinh Prabhatsinh Jhala & ors. v. State of Gujarat & ors.***

Reported in – 2010 CriLJ 2462. (Guj.)

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4. POINT INVOLVED

S. 2(s) – Shared household – Wife evicted from matrimonial home – Wife alleging that she was in possession of one bed room attached with bath room, kitchen, store room and open terrace on ground floor – Same was supported by sanctioned plan of first floor, produced on record – Vacant and peaceful possession of portion of premises restored to wife.

Parties – ***Nidhi Kumar Gandhi v. State & ors.***

Reported in – 2010 CriLJ (NOC) 79 (DEL.)

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5. POINT INVOLVED

S. 2(s) – 'Shared household'– Complaint against brother–in–law/petitioner–Complainant and petitioner never stayed together in same household – Merely because she was abused by petitioner and certain allegations made against her – Will not amount to domestic

violence in absence of ingredients of shared household.

Parties – *K. Narasimhan v. Smt. Rohini Devanathan*

Reported in – 2010 CriLJ 2173 (Kar.)

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6. POINT INVOLVED

S.12 – Application under – Amendment of – Proceedings under Act of 2005 are of quasi civil nature – Amendment of application – Permissible.

Parties – *Raosaheb Pandharinath Kamble & ors. v. Shaila Raosaheb Kamble & ors.*

Reported in – 2010 CriLJ 3596 (Bom.)

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7. POINT INVOLVED

S. 12 – Complaint – Seeking maintenance and accommodation to complainant wife and son – Wife and husband admittedly living separately since last 15 yrs. – Wife abruptly, after 15 yrs alleging domestic violence – Wife and son already getting maintenance as per orders of Court – No averment in complaint that higher amount of maintenance or accommodation in house of husband was demanded and refused by husband – Nor that there was any prohibition on use of accommodation – Complaint not maintainable.

Parties – *Kishor Shrirampant Kale v. Sou. Shalini Kishor Kale & ors.*

Reported in – 2010 CriLJ 4049 (Bom.)

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8. POINT INVOLVED

S. 12 – Maintenance – Claim by woman against her son and grandsons – Son was capable to pay maintenance – He and not grandsons would be liable to pay maintenance and medical expenses.

Parties – ***Ganesh Rajendra Kapratwar and Anr. v. State of Maharashtra***

Reported in – 2010 CriLJ 1027 (Bom.)

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9. POINT INVOLVED

S. 12 – Proceedings under the Act – Compliance of strict procedure under Criminal Procedure Code – Magistrate not bound to follow strictly procedure laid down under Criminal Procedure Code – Magistrate has power to recall summons or to drop proceedings against respondent if it is demonstrated that respondent had been wrongly or erroneously joined.

Parties – ***Jaydipsinh Prabhatsinh Jhala & ors. v. State of Gujarat & ors.***

Reported in – 2010 CriLJ 2462. (Guj.)

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10. POINT INVOLVED

S. 12 – Applicability of the Act – Retrospective effect – Wife seeking

maintenance on ground that she was forced to live separately because of torture and harassment made by husband for demand of dowry – Marriage was dissolved by consent prior to 3 yrs of coming into force of Act – Petitioners cannot be said to be aggrieved persons – Setting aside order of Magistrate granting maintenance – Proper.

Parties – *Smt. Hema alias Hemlata & anr. v. Jitendra & anr.*

Reported in – 2010 CriLJ 1744 (Raj.)

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11. POINT INVOLVED

* Ss.12 & S.20 – Maintenance – Order passed by Civil Court or Family Court – Need not be based on domestic incident report received from protection officer.

S. 12(1) contemplates an application before the Magistrate wherein the proviso to the Section makes it clear that before passing an order by the Magistrate, he shall take into consideration the domestic incident report received from the Protection Officer. But however, no such proviso is enumerated u/s 26 of the said Act. If the intention of the legislature is that even if an application is filed before the Civil Court or family Court or a Criminal Court by the aggrieved person, an order shall be passed by them taking into consideration any domestic incident report

received form the Protection Officer or the service provider, then the legislature would have incorporated such proviso as in the case of S. 12(1), even in S. 26 also. Thus, a conjoint reading of both Ss. 12 and 26 will make it clear that when a Magistrate passes an order, he shall receive the report from the Protection Officer but whereas such a report is not contemplated, when an order is passed by the Civil Court or by the Family Court.

* S. 2(f) – 'Domestic relationship' – Parties had shared household, temporarily lived together and had consensual sex – 'Domestic relationship' can be inferred between two of

them – Woman can claim maintenance by making application under Act.

Any woman who is or has been in a domestic relationship with the respondent can make a complaint under the provisions of the said Act. Further the "domestic relationship" is defined as a relationship between two persons, who live or have, at any point of time, lived together. The provision does not say that they should have lived together for a particular period. Even as per the case of the petitioner, he had consensual sex with her, but there was no promise to marry her. Thus, the averments made in the plaint as well as in the counter affidavit will make it very clear that the petitioner and the respondent had a close relationship and had sex. The Act does not contemplate that the petitioner and the respondent should live or have lived together for a particular period or for few days. From the averments made by the petitioner in his plaint and in his counter affidavit, one can infer that both of them seems to have shared household and lived together at least at the time having sex by them. Application filed by the respondent under the provisions of the 2009.

Parties – ***M. Palani v. Meenakshi***

Reported in – AIR 2008 (MAD.)162

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12. POINT INVOLVED

Ss. 12, 23 & 37 of Protection of Women from Domestic Violence Act, 2005 and Rule 7 of Protection of Women from Domestic Violence Rules, 2006 – Interim maintenance – During pendency of petition filed u/s 12 – Can be granted – Filing of separate application for interim relief u/s 23 not necessary – However, opportunity of hearing has to be afforded to respondent before granting interim relief.

Sub-section (2) of S. 23 read with Rule 7 clearly shows that there is no requirement of filing a separate application for interim relief under S. 23 of the said Act. Apart from these two provisions, sub-section (2) of S. 28 of the said Act provides that the Court is empowered to lay down its own procedure for disposal of an application under S. 12 or an application under sub-section (2) of S. 23 of the said Act. Therefore, there is no requirement of filing a separate application for grant of interim relief under S. 23 of the said Act. However, while considering the question of granting the ex parte ad interim or interim relief, the learned Magistrate will have to consider the nature of the reliefs sought in the main application under S. 12(1) of the said Act inasmuch as an interim relief under S. 23 of the said Act can be granted in aid of the final relief sought in the main application. On the basis of an affidavit in Form III prescribed by the rules, in a given case, learned Magistrate can grant ex parte ad interim relief. However, before

granting an interim relief, an opportunity of being heard has to be afforded to the respondent. The respondent can always file a reply to the affidavit.

Parties – ***Vishal Damodar Patil v. Vishakha Vishal Patil***

Reported in – 2009 CriLJ 107 (Bom.)

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13. POINT INVOLVED

* **S.12** of Protection of Women from Domestic Violence Act, 2005 and S.7(2)(b) of Family Courts Act, 1984 – Petition under S. 12 of 2005 Act before Magistrate – Another dispute between same parties pending in Family Court – No civil Court or Family Court has jurisdiction to deal with petition under S. 12 – Superior Courts cannot direct transfer of petition to Family Court – Same would deprive aggrieved woman of right to expeditious procedure for enforcement of her rights under the 2005 Act.

* **Ss. 12, 27(1)(a) & 20** – Domestic violence – Magistrate – Plea – Family Court – Inherent powers – Petition under S. 12 before Magistrate – Plea that overlapping claims have been made before Magistrate and before Family Court – Said plea cannot be said to be sufficient to non–suit aggrieved woman – Option to claim identical relief elsewhere vesting in her would not oust jurisdiction of Magistrate

under the 2005 Act – Proceedings cannot be quashed on that ground.

Parties – ***M. A. Mony v. M. P. Leelamma and another***

Reported in – 2007 CriLJ 2604 (Ker.)

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14. POINT INVOLVED

* **Ss. 12(1) & 29** – Domestic violence – Appeal – Is maintainable against final order passed by Magistrate u/s 12(1).

* **Ss.18, 19, 20, 21, 22 & 23(2)** – Domestic violence – Magistrate – Ex parte ad interim relief – In terms of Ss.18 to S.22 of the Act – Can be granted by Magistrate in exercise of powers u/s 23 – However before granting interim relief, opportunity of hearing is to be granted to respondent.

* **S. 23** – Domestic violence – Appellate court – Interim relief – Granted in exercise of powers u/s 23 – Order is appealable – However appellate Court would interfere with the discretionary order passed u/s 23 only when said discretion was exercised arbitrarily, capriciously or perversely – Or when Court while granting relief ignored settled principles of law regulating grant of or refusal of interim relief.

  An appeal will lie against orders passed under sub-section (1) and sub-section (2) of S. 23 of the Act which are passed by the Magistrate. However, while dealing with an appeal against the order passed u/s 23 of the Act, Appellate Court will usually not

interfere with the exercise of discretion by Magistrate. The appellate Court will interfere only if it is found that discretion has been exercised arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant or refusal of interim relief.

* **S.29** – Domestic violence – Appeal – Purely procedural orders not determining rights or liabilities of parties – Are not appelable.
An appeal u/s 29 will not be maintainable against purely procedural orders which do not decide or determine the rights and liabilities of the parties.

Parties – ***Abhijit Bhikaseth Auti v. State of Maharashtra and anr.***

Reported in – 2009 CriLJ 889 (Bom.)

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15. POINT INVOLVED

* **S. 12(3)** of Protection of Women from Domestic Violence Act, 2005 & R. 6 of Protection of Women from Domestic Violence Rules, 2006 – Practice and procedure – Legislature – Filing complaint to Magistrate – Procedure – Use of words "as nearly as possible thereto" in S. 12 and R. 6 – Shows intention of Legislature was not to reject complaint for not filing in prescribed Form II.

* Domestic violence – Complaint to Magistrate – Aggrieved person can file complaint directly to Magistrate concerned

– It is choice of aggrieved person to directly approach the Magistrate or she can approach Protection Officer and in case of emergency, the service provider and with their help to the Magistrate concerned.

* **S. 12** – Domestic violence – Complaint to Magistrate – Cannot be rejected merely on basis that it does not contain verification note on complaint itself – Complainant filing affidavit swearing contents of complaint – Amounts to sufficient compliance of prescribed procedure.

Parties – ***Milan Kumar Singh and Anr. v. State of U.P. and Anr.***

Reported in – 2007 CriLJ 4742 (All.)

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16. POINT INVOLVED

S.17 of Protection of Women from Domestic Violence Act, 2005 and O.39 R.1 & 2 of Civil Procedure Code, 1908 – Injunction – Right of wife to claim residence in 'shared household' – Daughter-in-law cannot claim right to live in house of parents of husband against their consult and wishes – Injunction restraining daughter-in-law from forcibly entering into house of parents of husband and disturbing peaceful possession, can be granted.

'Matrimonial home' is not defined in any of the statutory provisions. However, phrase "matrimonial home" refers to the place which

is dwelling house used by the parties, i.e. husband and wife or a place which was being used by husband and wife as the family residence. Matrimonial home is not necessarily the house of the parents of the husband.

In fact the parents of the husband may allow him to live with them so long as their relations with son (husband) are cordial and full of the love and affection. But if relations of son or daughter–in–law with parents of husband turn sour and are not cordial, the parents can turn them out of their house. The son can live in the house of parents as a matter of right only if the house is an ancestral house in which son has a share and he can enforce the partition. Where the house is self acquired house of the parents, son, whether married or unmarried, has no legal right to live in that house and he can live in that house only at mercy of his parents up to the time the parents allow. Merely because the parents have allowed him to live in the house so long as his relations with the parents were cordial, does not mean that the parents have to bear his burden throughout the life. It is because of love, affection, mutual trust, respect and support that members of a joint family gain from each other that the parents keep supporting their sons and families of sons. In turn, the parents get equal support, love, affection and care. Where this mutual relationship of love, care, trust and support

goes, the parents cannot be forced to keep a son or daughter in law with them nor there is any statutory provision which compels parents to suffer because of the acts of residence and his son or daughter in law. A woman has her rights of maintenance against her husband or sons/daughters. She can assert her rights, if any, against the property of her husband, but she cannot thrust herself against the parents of her husband, nor can claim a right to live in the house of parents of her husband, against their consult and wishes.

Parties – *Neetu Mittal v. Kanta Mittal and ors*

Reported in – AIR 2009 (DEL.) 72

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17. POINT INVOLVED

S. 18– Application for obtaining orders of reliefs– Requirement – Protection of Women From Domestic Violence Rules, 2006, providing that application shall be in form No. 2 or as early as possible thereto – Expression ‘as early as possible’ makes rule directory– Application not made in form No. 2 does not deserve outright rejection.

Parties – *Smt. Rina Mukherjee & ors. v. State of West Bengal & Anr*.

Reported in – 2010 CriLJ (NOC) 78 (CAL.)

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18. POINT INVOLVED

S. 19 – Domestic Violence– Separate accommodation and monetary relief – All ingredients of domestic violence, proved – Wife residing in rented premises and husband living with another woman – Wife entitled to rent of house she was residing in – Wife, teacher in Nursery school, was also giving tuitions– Husband prevented wife from giving tuitions on pretext that he was paying rent for premises and he did not like any other person in house– She would be entitled to Rs. 10,000/– for loss of earnings.

Parties – ***Ann Menezes v. Shahajan Mohammad*****.**

Reported in – 2010 CriLJ 3592 (Bom.)

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19. POINT INVOLVED

Ss.20 & 22 of Protection of Women from Domestic Violence Act, 2005 and R. 6(1) of Protection of Women from Domestic Violence Rules, 2006 – Domestic violence – Inherent powers – Domestic violence case – Quashing of proceedings – Father of lady claiming medical expenses incurred by him for delivery and other health problem suffered by his daughter from husband – Reliefs sought against husband only – No specific allegations were made against other family members except mentioning that at their instance, husband was not providing money for medical expenses and disowned liability – Prosecution against other family members liable to be quashed – Proceedings against husband continued.

Parties – *Mohammad Maqeenuddin Ahmed and ors. v. State of A.P. and Anr.*

Reported in – **2007 CriLJ 3361 (A.P.)**

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20. POINT INVOLVED

* **S. 23** – Interim relief– Order granting interim maintenance – It is not necessary in each and every case to obtain report from protection Officer or service provider to decide application for interim relief – Matter can be decided on basis of material on record – At time of final hearing provisions of S. 12 are to be complied with.

* **S. 23 –** Interim relief– No need to file separate application for interim relief under S. 23– only requirement is to hear parties.

Parties – *Nandkishor Damodar Vinchurkar v. Kavita Nandkishor Vinchurkar & anr.*

Reported in – 2010 CriLJ (NOC) 298 (Bom.)

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21. POINT INVOLVED

* **Ss. 23 & 29** – Domestic violence – Appeal – Interim *ex parte* order under S. 23 – Appealable under S. 29.
The definite article 'the' used in S. 29 must certainly have reference to the orders referred earlier. All orders referred to earlier in Chapter 4 of the statute must be held to be fall within the sweep of expression 'the order' as there is no other or better method of understanding the

definite article 'the' used immediately before the expression 'order' in S. 29 of the Act. Therefore going by the plain language of S. 29, the expression 'the order' must take within its sweep all orders passed under Ss. 18 to 23 and there no reason to exclude, going by language and semantics, an order passed under S. 23 from the sweep of the expression 'the order' in S. 29. A reference to the provisions of Ss. 18 to 22 clearly shows that interim orders under Ss. 18 to 22, though not final in nature and though they may hold the field only till final orders are passed, will also affect the rights of parties substantially. An interim protection order, an interim residence order, an interim monetary order, an interim custody order or an interim compensation order under Ss. 18 to 22 will also substantially affect the rights of parties at least till such orders are altered or modified. A person who has suffered an ex parte interim order under S. 23 can always go before the Magistrate and request for modification/ vacation of the interim order or not to extend the interim order. But the mere fact that such a course is available to him cannot at all persuade the Court to hold that such an interim order will be beyond the purview of S. 29 and no such appeal would at all be maintainable. The mere fact that an appeal is preferred against an interim order need not necessarily retard the progress of disposal of applications under Ss. 18 to 22. Of course, under S. 12(4), the first date of hearing must be within 3 days of the date on which the Court passes the order.

But the ex parte interim order may live longer. Moreover in a case depending on the place where the respondent is, the date of first hearing may suitably be fixed on a later date and in such event also, the period of life of the interim order may be longer. The mere fact that the respondent who has suffered the interim order can go to the Magistrate seeking modification of the order passed under S. 23 and can secure an order with expedition is also no ground to interpret S. 29 to exclude any right of appeal against an interim order under S. 23.

* Domestic violence – Appeal – Appeal against interim order – Power to grant stay – Exercise of Great care and caution must be applied.
An appellate Court considering the admission of an appeal and considering grant of stay against the interim orders appealed against, must certainly and alertly consider all the circumstances and then only grant interim orders of suspension. Not to do so, would be to do violence to the statutory rationale underlying a welfare statute enacted by the Parliament. A great care and caution must be applied before granting ex parte orders of suspension/stay in appeals preferred under S. 29.

* Domestic violence – Magistrate – Power to grant interim ex parte order – Exercise of – Magistrate must be conscious of repercussions and verification of such order.

The Magistrates have great responsibility while considering grant of interim ex parte order

under S. 23. The nature of the possible orders under Ss. 18 to 22 and the interim orders that can be passed by invocation of such powers under S. 23 must instill in the mind of the Magistrate the concomitant degree of care and caution which is necessary before passing ex parte interim orders under S. 23 r/w Ss. 18 to 22. In cases where existence of matrimony is disputed etc. alert application of mind will certainly be required before such ex parte interim orders are passed. Magistrates must be conscious of the repercussions and ramifications of such ex parte interim order which may be passed under S.23.

Parties – ***Sulochana and Anr. v. Kuttappan and ors.***

Reported in – 2007 CriLJ 2057 (Ker.)

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22. POINT INVOLVED

S. 24 – Magistrate must ensure furnishing of copies of order free of cost to parties concerned.

Parties – ***K.E. Jose v. State of Kerala and another***

Reported in – 2007 Cri.L.J. (NOC) 476 (Ker.)

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23. POINT INVOLVED

Ss.12 & 26 of Protection of Women from Domestic Violence Act, 2005 and S. 7 of Family Courts Act, 1984

Family Court – Domestic violence – Maintenance – Application for maintenance – Filed before family Court u/s. 12 of Domestic Violence Act, 2005 – Family Court not competent to entertain application – Instead

wife is entitled to move an application u/s 26 of Domestic Violence Act, 2005 before Family Court in maintenance proceeding said to be pending before Court.

In view of scheme of Domestic Violence Act, 2005, specially as per the provisions of S. 26 of the Act, the appellant wife is entitled to seek relief available to her u/ss. 18, 19, 20, 21, 22 of Act, 2005 in the maintenance proceeding pending in the Family Court. But the appellant wife is required to move an application u/s 26 read with Section in which she is seeking relief. However, instead of doing that, the appellant wife moved an independent fresh application u/s 12 of the Act, 2005 which can be entertained only by the Magistrate having jurisdiction. An application u/s 12 cannot be filed before Family Court because proceeding u/s 12 of the Act, 2005 as per the scheme of the Act, has to be filed before the Magistrate competent to entertain the application.

Parties – ***Neetu Singh v. Sunil Singh***

Reported in – AIR 2008 CG 1

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24. POINT INVOLVED

* **S. 27** – Domestic violence – CJM – Criminal Court – "Judicial Magistrate First Class" – CJM – Is not separate class of Court but is only Court of Judicial Magistrate First Class.

* **S.12 (3), S.192, S.410** of Criminal Procedure Code, 1973 – CJM – withdrawal of case – CJM – Is invested with power of making over cases

u/s 192 and withdrawing of cases u/s 410 – Merely because he is invested with such powers it cannot be said that his local jurisdiction (judicial power) extends to entire district – Aforementioned powers are given to him only for effective exercise of general control and supervision over his subordinate Magistrates.

* **S.27** – Domestic violence – CJM – withdrawal of case – Jurisdiction – Approval by High Court in exercise of powers u/s 14(1) of CrPC of local limits of jurisdiction of CJM as recommended by him – CJM cannot exercise jurisdiction beyond such local limits. The provisions in the Criminal Procedure Code, relating to enquiry of offences are applicable to the enquiries under the Act also. In other words, Chapter XIII CrPC dealing with the jurisdiction of the criminal courts with regard to enquiries and trials is applicable to the proceedings under the Act.

  Therefore, where the High Court in exercise of its powers of control under S. 14(1) CrPC approved the local limits of the jurisdiction of the CJM, the exercise of judicial powers by the CJM is to be confined only to those local limits and not beyond. Consequently, as neither the applicant nor any of the respondents resided orcarried on business or was employed within the local limits of the Police Station which were the only two police stations within the local jurisdiction of the CJM, he would have

no jurisdiction to conduct any inquiry or pass or grant any protection or other order under the Act. It cannot be said that he is not bound by

the territorial limits defined by himself under S. 14 CrPC It cannot also be said that even if the area in which the offence was committed falls within the local limits of the area assigned by the CJM to some other Magistrate subordinate to him, the CJM is still competent to take cognizance of the offence committed anywhere in his district. When, with the approval of the High Court, the local jurisdiction of each Magistrate including that of the CJM has been defined, the CJM cannot ignore the same or re-define it without the knowledge or concurrence of the High Court. Further, although a Magistrate has the power to take cognizance of an offence committed outside his jurisdiction, the aspect of territorial jurisdiction will become relevant when the question of enquiry or trial arises. Moreover, the power of the CJM to withdraw a case and enquire into or try the same under S. 410 CrPC does not confer on him territorial jurisdiction over the area comprised within the local limits of another Magistrate from whose Court such case was withdrawn. A case may be transferred to a Magistrate having no territorial jurisdiction if he is, otherwise competent. By virtue of that transfer such Magistrate gets only the authority to try that case. But he does not get the jurisdiction over the area comprised within the local limits of the Magistrate from whose Court the case was transferred. S. 192 CrPC also does not relate to the territorial jurisdiction of the CJM.

Parties – *Anilkumar and ors. v. Sindhu and Anr.*

Reported in – 2009 CriLJ 3530 (Ker.)

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25. POINT INVOLVED

S.31 – Breach of protection order – Registration of case and investigation – Competency of Magistrate – Magistrate can direct registration of case and investigate case under S. 31 of Act for breach of order or interim protection order – Unless order of Lok Adalat is order in terms of S. 18 it cannot be a protection order or interim protection order – Its breach will no attract offence under S. 31.

Parties – *Kanaka Raj v. State of Kerala & Anr.*

Reported in – 2010 CriLJ (NOC) 447 (KER.)

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26. POINT INVOLVED

Sections 12 and 18 of Protection of Women from Domestic Violence Act, 2005

Domestic Violence – Magistrate – Plea – Initiation of enquiry u/s 12 – Protection orders, which Magistrate may pass u/s 18 is only on being prima facie satisfied that domestic violence has taken place or is likely to take place – Plea that without considering domestic incident report, very initiation of enquiry is bad – Not tenable.

Parties – *Rakesh Sachdeva v. State of Jharkhand*

Reported in – 2011 Cri. L. J. 158

The proviso to Section 12 would impose that before passing any order on an application of the aggrieved person, the Magistrate shall take into consideration any domestic incident report received by him from the Protection

Officer. The order contemplated in the proviso relates to the final orders, which the Magistrate, may pass under Section 18 of the Act. The Protection orders, which the Magistrate may pass under Section 18 of the Act, is only on being prima facie satisfied that the domestic violence has taken place or is likely to take place. The insistence to take into consideration the domestic incident report of the Protection Officer would therefore, not apply at the stage of initiation of the enquiry under Section 12 of the Act. The contention of the petitioners that without considering the domestic incident report, the very initiation of the enquiry is bad, appears to be misconceived and therefore, not tenable.

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27. POINT INVOLVED

Sections 300 of Criminal Procedure Code, 1973, Sections 18, 19, 20, 21 and 22 of Protection of Women from Domestic Violence Act, 2005 and Section 376 of Indian Penal Code, 1860

Double Jeopardy – Domestic Violence – Rape – Magistrate – Offence under Penal Code alleged in proceedings under Domestic Violence Act – Cannot be tried by Magistrate exercising powers under Domestic Violence Act – S.300 of Cr.P.C. does not apply.

Parties – ***Pradyumna S. Harish v. State***

Reported in – 2011 Cri. L. J. 558

In this case, there is no dispute that, the earlier proceedings were initiated under the provisions of "The Protection of Women from Domestic Violence Act" and not for any of the offences under the provisions of I.P.C. or any other law under which the accused could be punished for the offence alleged. Scope and jurisdiction of the Magistrate exercising the power under

the provisions of Domestic Violence Act is entirely different and distinct. If allegation of offence punishable under the provisions of I.P.C. is alleged in proceedings under the provisions of the Act, question is, as to whether the Magistrate exercising his power under the provisions of the Act could try the offence one alleged in the complaint, whether the provisions of the said Act provides for punishing the accused. In this regard, it is useful to refer to the provisions of the Act. Section 18 of the said Act confers power on the Magistrate to pass the protection, order against the domestic violence. Section 19 provides for residence order. Section 20 provides for monetary benefits. Section 21 provides for custody of the child. Section 22 provides for compensation. Main relief could be granted under Sections 18 to 22 of the said Act. None of the provisions of the said Act provides for trying the offence punishable under the provisions of Indian Penal Code or any other law. Proceedings under the provisions of the Act are not meant to deal with the offences, even if such allegations are made. Such allegation may amount to domestic violence, but the said proceedings cannot be termed as trial of the offence.

Reading of Section 300 of Cr.P.C. makes it clear that the person, who has been tried once by the competent Court having jurisdiction, which means if the Magistrate under the provisions of the Act having jurisdiction to try an offence and having tried and the matter ended in conviction or acquittal, such person shall not be tried once again for same offence nor on the same set of facts for any other offence. Admittedly, the Magistrate has no power to try the offence punishable under Section 376 of IPC, much less under the provisions of the Act. Adjudication by competent Court to deal with such offence or any offence arising out of said allegations, even if the allegations are made in those proceedings, for want of jurisdiction, the Magistrate cannot try the offence. Section 300 of Cr.P.C. is not applicable to the case on hand. Admittedly, the proceedings under Domestic Violence Act are not initiated for

any punishment for the offence alleged in the complaint, but it was only for protection and adjudication of the rights of the complainant and the proceedings are entirely distinct and separate, nothing to do with the offence under S. 376 I.P.C.

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*28. POINT INVOLVED

Section 3 of Protection of Women from Domestic Violence Act, 2005

Domestic Violence – Words And Phrases – Domestic violence – Includes "physical abuse", "sexual abuse", "verbal and emotional abuse" and also "economic abuse."

Parties – ***Jovita Olga Ignesia Mascarenhas e Coutinho v. Rajan Maria Coutinho***

Reported in – 2011 CRI. L. J. 754

The expression "domestic violence" has a very wide amplitude, as defined under Section 3 of the Act, and it includes, physical abuse, sexual abuse, verbal and emotional abuse, economic abuse which in turn, inter alia, includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an Order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, the property jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance.

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29. POINT INVOLVED

Section 26 of Protection of Women from Domestic Violence Act, 2005

Jurisdiction of Court – To try application of aggrieved person – Expression ‘resides’ in S. 27 – Question of residence is to be decided by considering whether party claiming

residence has intention to stay at that particular place is to be decided on basis of provisions of S. 27 that even casual visit of place would allow party to claim it his or her temporary residence within meaning of S. 27

would lead to abuse of legal process – Expression "resides" implies something more than a casual stay and implies some concrete intention is to remain at a particular place but not merely to pay a casual or flying visit.

Parties – ***Advocate Ramesh Mohanlal Bhutada & Anr. v. State of Maharashtra & Ors.***

Reported in – 2011 Cri.L.J 4074

The question of residence is required to be decided as to whether the party claiming residence, permanent or temporary, has an intention to stay at a particular place then alone it could be said that the party is residing at that particular place, either permanently or even temporarily. The question as to whether aggrieved person has made a particular place an above, permanent or temporary, is a question to be decided with reference to facts of each case. If liberal construction is placed upon the provisions made under Section 27 of the Act to allow even casual visit of the place to claim that the place is his or her temporary residence within the meaning of Section 27 of the Act 2005, then it may lead to abuse of the legal process as the aggrieved person may choose to harass the other party by choosing any place where he or she may be a casual visitor. In ***Mst. Jagirdaur and another v. Jaswant Singh, AIR 1963 SC 1541*** while dealing with the question relating to the term "resides" in respect of petition by a wife against her husband for maintenance, considering the dictionary meaning of the word "resident", the Apex Court has observed that the word means both a permanent dwelling as well as temporary living in a place. It is capable of different meanings including domicile in the strictest and the most technical sense and a temporary residence. Whichever meaning is given to it one thing is obvious that it does not include causal stay or a flying visit to a particular place. In short, the meaning of the word would, in the ultimate analysis, depend upon the context and the purpose of a particular statute. The expression "reside" implies something more than a casual stay and

implies some concrete intention t at a particular place but not merely to pay a casual or flying visit. In other words, it is always something more than a casual visit or casual stay at a particular place to assign status to the person as "temporary resident" of a particular place is contemplated under the law.

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CHAPTER-II

LAW RELATING TO MAINTENANCE

PART-I

ARTICLES

APPLICABILITY OF C.P.C. IN PROCEEDINGS U/S 125 Cr.P.C. : A CRITIQUE

Ramkumar Choubey
O S D, J.O.T.R.I.

As it is said that the proceedings under Section 125 of the Code of Criminal Procedure, 1973 (in short - Cr.P.C.) are in the nature of quasi-criminal and quasi-civil, the Courts of Judicial Magistrate often come across the question whether the provisions of Code of Civil Procedure, 1908 (in short - C.P.C.) have any application to the proceedings under Section 125 Cr.P.C.? Before adverting to this legal point in the debate, it would be apposite to discuss the object and nature of the proceedings under Section 125 Cr.P.C.

Object of the provision

Section 125 Cr.P.C. which occurs in Chapter IX under the caption; "Order for Maintenance of Wives, Children and Parents" is a recasting of the provision of Section 488 of the old Code, 1898 which is a measure of social justice and special enactment to protect distressed women, children and parents. The proceedings under Chapter IX of the Cr.P.C. are essentially judicial proceedings of a Criminal Court. However, the proceedings under this Chapter are not punitive. The object is not to punish a person for neglect to maintain those whom he is bound to maintain. The intent of Legislature is to provide only a speedy remedy against starvation for a deserted wife or children or parents by a summary procedure to enforce liability in order to avoid vagrancy. Section 125 Cr.P.C. gives effect to the natural and fundamental duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves.

The Supreme Court, in *Captain Ramesh Chander Kaushal v. Veena Kaushal, AIR 1978 SC 1807,* has underlined the very object of Section 125 Cr.P.C. and opined that 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. This view has been reiterated by the MP High Court in *Nanhi Bai v. Netram, 2001 (3) MPLJ 170.*

Nature of Proceedings

A remedy of civil nature is one by which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State. Whereas, remedy of criminal nature is one under which a person can be punished for an offence committed. A criminal proceeding, if carried to its conclusion, may result in the imposition of sentences. The character of the proceedings depends not upon the nature of the Tribunal, which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. (See - *S.A.L. Narayan Row v. Ishwarlal Bhagwandas, AIR 1965 SC 1818*).

The Supreme Court in *Nand Lal Misra v. Kanhaiya Lal Misra, AIR 1960 SC 882* while dealing with the question that whether Section 488 of the old Code (now Section 125) contemplates any preliminary enquiry on the part of a Magistrate before he could issue notice to the opposite party, held that the relief given under this Chapter is essentially of civil nature. It prescribes a summary procedure for compelling a man to maintain his wife or children. It is conceded that Sections 200 to 203 of Cr.P.C. do not apply to an application under Section 488 of Cr.P.C. . As the proceedings are of a civil nature, the Code does not contemplate any preliminary enquiry.

The Apex Court in its landmark decision of *Savitri v. Govind Singh Rawat, AIR 1986 SC 984* held that while passing an order under Chapter IX of the Cr.P.C. asking a person to pay maintenance to his wife, child or parent, as the case may be, the Magistrate is not imposing any punishment on such person for a crime committed by him. Chapter IX of the Cr.P.C. contains a summary remedy for securing some reasonable sum by way of maintenance.

The Supreme Court, in *Shail Kumari Devi v. Krishan Bhagwan Pathak, AIR 2008 SC 3006,* has opined thus:

"Now, having regard to the nature of proceedings, the primary object to secure relief to deserted and destitute wives, discarded and neglected children and disabled and helpless parents and to ensure that no wife, child or parent is left beggared and destitute on the scrap-heap of society so as to be tempted to commit crime or to tempt others to

> commit crime in regard to them. It was held that the Magistrate had 'implied power' to make such order. The jurisdiction of the Magistrate under Chapter IX is not strictly criminal in nature."

In *Ahzaz Hussain v. Shama Parveen, 1986 (II) MPWN 91* it is held that the proceedings instituted on an application for maintenance under the Cr.P.C. are of a civil nature.

Section 7 of the Family Courts Act, 1984 contemplates two-fold jurisdiction of the Family Court. Cases, except the case under Chapter IX of Cr.P.C., are decided by the Family Court as a District Court; whereas, while dealing with the proceedings under Chapter IX of Cr.P.C., Family Court exercises the jurisdiction of a Judicial Magistrate First Class. The M.P. High Court, in the matter of *Rajesh Shukla v. Meena R. Shukla, 2005 CrLJ 3800,* had an occasion to deal with the question as to whether the revision arising out of an order passed by the Family Court on application under Section 125 Cr.P.C. should be registered as Criminal Revision as they flow from the proceedings under the Cr.P.C.? The Full Bench is of the view that since powers of Judicial Magistrate First Class have been exercised by the Family Court for deciding application under Section 125 Cr.P.C., therefore, the revision filed against such order should be registered as Criminal Revision. The Kerala High Court also expressed the same view in *Sathyabhama v. Ramchandran, 1997 CrLJ 4306.*

Application of C.P.C.

As the proceedings under Section 125 Cr.P.C. are of a civil nature and to provide speedy remedy against starvation for a deserted wife or children or parents, by a summary procedure, it is but natural to have procedural rules for deciding a case of maintenance under this scheme. The normal practice is that the parties to such proceedings are required to take various steps which are usually being taken in a civil proceeding under the law of civil procedure such as service of summons, amendments in pleadings, impleadment of parties, restoration of proceeding, setting aside ex-parte proceeding, compromise and so on. Therefore, the question as to

whether the provisions of C.P.C. have any application to the proceedings under Section 125 Cr.P.C. needs to be answered.

Though the provisions of Section 125 Cr.P.C. appear in a criminal inquiry, the proceedings are of a civil nature. They do not amount to a civil suit. Thus, the proceedings under this Section are quasi-civil in nature. But, as observed in *Ram Chand Saudagar Ram v. Jiwan Bai, 1958 CrLJ 1437,* it does not mean that the Magistrate dealing with such cases gets all the powers of a Civil Court of that all the rules governing the civil proceedings can be imported.

In *Pandharinath Sakharam Thube v. Kum. Surekha Pandharinath Thube, 1999 CrLJ 2919* the Bombay High Court is of the view that the proceedings under Section 125 Cr.P.C. are wholly governed by the procedure of the Code of Criminal Procedure, they are really of civil nature, but are dealt with summarily in a Criminal Court for the purpose of speedy disposal on grounds of convenience and social order. In *Jamna Bai v. Shivnarayan, 1999 (I) MPWN 126*, the M.P. High Court has held that the proceedings under Section 125 Cr.P.C. are in the nature of quasi-criminal and quasi-civil and as such strict principles of civil or criminal law cannot be applied to these cases. In *Pendiyala Sureshkumar v. Sompally Arunbindu, 2005 CrLJ 1455*, the Gujrat High Court has held that rule of Best Evidence is not applicable in maintenance proceedings being a quasi-civil proceedings.

In *Rajesh Shukla's* case (supra) the Full Bench of the M.P. High Court has held that the Chapter IX of Cr.P.C. provides for its own procedure. Section 125 of Cr.P.C. pertains to orders for maintenance of wives, children and parents. Section 126 of Cr.P.C. provides the procedure for dealing with said application. Code does not provide for review or change in the order once finally passed under Section 362 of the Code. However, unlike Section 362 of the Code, powers to alter or modify the maintenances is conferred upon the Court under Section 127 of the Code. Under Section 126 of the Code, power is conferred for setting

aside *ex parte* order. Section 128 of the Code relates to enforcement of order of

maintenance by the Magistrate. Thus, Chapter IX of the Code itself provides its own procedure for grant of maintenance.

Service of summons

Since the proceeding under Section125 Cr.P.C. against a person is essentially of a civil nature, the Court has a duty to inform him about the proceedings and of his right to appear and contest. Therefore, the Magistrate has to issue notice to the opposite party. Notice may be termed as summons but process does not consist of summons as contemplated in Chapter VI of the Cr P.C.. Where a person wilfully avoids service or neglects to attend the Court, the law enables the Magistrate to determine the case *ex parte*. This indicates that the Magistrate cannot compel appearance of such a person in the same manner in which he can compel appearance of an accused person by resorting to provisions relating to summons, warrant of arrest, proclamation and attachment contained in Chapter VI of the Code. Therefore, the service of notice in regard to proceedings under Section 125 Cr.P.C. is not to be effected strictly in terms of the provision contained in Part A of Chapter VI of the Cr.P.C. However, the service of notice by registered post is unknown to the Cr.P.C. but it is permissible in cases instituted under Chapter IX Cr.P.C.

In *Balan Nair v. Bhavani Amma Valsalamma, 1987 CrLJ 399* the Full Bench of the Kerala High Court has viewed that such service cannot be challenged on the ground that service has not been attempted in terms of the provisions of Part A of Chapter VI of the Code. In *Balaka Baburao v. Balaka Ramanamma, 1997 CrLJ 4324* the Andhra Pradesh High Court has held that service by registered post is one of the modes of service contemplated by the Code of Criminal Procedure in proceedings under Chapter VI of the Code. The M.P. High Court had an occasion to dealt with similar situation in the matter of *Mohd. Yunus v. Mst. Shehada Bano, 1991 Cr L R (MP) 340* wherein it was observed that Section 62(2) Cr.P.C. itself indicates that the rules of service of summons personally on the person summoned is to be followed, if practicable. Section 64 Cr.P.C. provides for substituted service in case where the person summoned cannot, by exercise of due diligence, be found. In such a situation, resort to substituted service will not be illegal. Section 69 Cr.P.C. specifically provides that the Court

issuing the summons may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be sent by a registered post.

Action by minor without Next-friend

There is no difference between the right to maintenance and capacity to sue for maintenance under Chapter IX of the Cr.P.C. The provisions of the C. P. C. are not applicable to cases under Section 125 Cr.P.C. Therefore, a minor wife is entitled to maintain the action for maintenance without being represented by a next friend unlike as provided by Order XXXII of the C.P.C.

It has been held by the Andhra Pradesh High Court in *Gulam Mustafa v. Tahara Begum, 1980 CrLJ 124* that the fifteen years old Mohammedan wife is entitled to maintain application for maintenance without a next friend. The Court is of the view that if the Legislature intended that a wife, who is under 18 years of age, should not be permitted to start proceedings under Section 125 Cr.P.C. for maintenance against her husband, it would have certainly made the necessary provision therefor in that Section itself, as in the case of certain other proceedings covered by the Code. But the conspicuous absence of any such embargo on a wife, who is below the age of 18 years, applying for relief under Section 125 Cr.P.C. is sufficient to reject the contention that such wife is not competent to apply for maintenance under Section 125 Cr.P.C. unless she is represented by a guardian.

Amendments in pleadings

A proceeding instituted on an application for maintenance under Section 125 Cr.P.C. is of a civil nature. Whether such an application is required to be formatted under the rule of pleadings for a civil case? The answer is in the negative. In *Girishchandra v. Shushilabai, 1987 (II) MPWN 214* it has been held that the Court must avoid strict technicalities of pleading and proof in a proceeding under Section 125 Cr.P.C. In *Mohd. Hanif v. Aminabai, 1986 (II) MPWN 65* it has been held that rules of pleadings in civil cases are not attracted in proceedings under Section 125 Cr.P.C.

So far as amendments in an application filed under Section 125 Cr.P.C. is concerned, there is no specific provision in the Cr.P.C. for amending the application under it. But the Court can allow to amend the application for maintenance under its ancillary or incidental powers. In *Gulamnabi v. Raisabi, 1983 MPWN 396,* it has been held that it is true that there is no specific provision in the Cr.P.C. for amending the application under Section 125 Cr.P.C. but the proceedings under this Section are aimed at providing the persons entitled to maintenance a speedy relief in a summary form. Thus, not in the strict sense of amending one's pleading, certainly for the purpose of determining the real question of controversy between the parties and to promote the ends of justice necessary amendments have to be made.

It is said that the Courts are not powerless to do what is absolutely necessary for dispensation of justice in the absence of enabling provision, provided there is no prohibition or illegality or miscarriage of justice is involved. In *Sainulabdheen v. Beena, 2004 CrLJ 2351* the Kerala High Court while dealing with a case under the Muslim Women (Protection of Rights on Divorce) Act, 1986, which is also a proceeding in the nature of quasi-civil and quasi-criminal and governed by the rule of criminal procedure, has observed that even assuming that the Magistrate has no specific power to amend the pleadings as in the Code of Civil Procedure, there is no specific prohibition in the Code of Criminal Procedure in allowing amendment of a petition filed under Chapter IX of the Code of Criminal Procedure.

Restoration of proceeding

There is no specific provision in Cr.P.C. if the application for maintenance is dismissed in non-appearance of the applicant to recall the order and to restore the case to its original number. With regard to such a situation, the Allahabad High Court in its decision of *Shabihul Hasan Jafari v. Zarin Fatma, 2000 CrLJ 3051* laid down that it will be wrong to say that since there is no express provision in the Code, the Magistrate does not have power to dismiss the proceeding for default of the petitioner. This view has been reiterated in *Kehari Singh v. State of U. P., 2005 CrLJ 2330* wherein it is held thus:

> " If it is held that the Court lacks the jurisdiction to restore the case in absence of such provision, the very

> object and purpose of Legislature would be frustrated. Therefore, the Magistrate is empowered to restore the proceedings initiated under Section 125 Cr. P. C. which were dismissed in non-appearance of the complainant/applicant."

In *Sk. Alauddin @ Alai Khan v. Khadiza Bibi, 1991 CrLJ 2035*, the Calcutta High Court, while dealing with a question that whether the learned Magistrate has the jurisdiction to restore the proceeding under Section 125 Cr.P.C. to file once it is dismissed for default, has held that the Magistrate can invoke the inherent powers to recall his earlier order finally disposing a proceeding of this nature provided sufficient grounds are shown."

A Division Bench of the Orissa High Court in *Smt. Aruna Kar v. Dr. Sarat Dash, 1993 CrLJ 1506*, while examine the question that whether the Family Court could exercise its ancillary or incidental powers for restoration of a case under Section 125 Cr.P.C., observed that the Court in exercise of its implied powers can direct dismissal for non-prosecution and restore the proceedings.

Setting aside ex-parte proceeding

The duty of the Court is to give opportunity of hearing to the person against whom the claim for maintenance is made. That does not and cannot mean that the Court can compel his appearance. Whether he should appear or not is a matter left to his own choice. However, where such a person wilfully avoids service or neglects to attend the Court, the law enables the Magistrate to determine the case *ex parte*. This is the rationale for the proviso to Section126 Cr.P.C. which empowers the Court under certain circumstances to proceed *ex parte*. Further, proviso to Section 126 Cr.P.C. confers the power to set aside *ex parte* order for good cause shown on an application made within stipulated period subject to such terms including terms as to payment of costs to the opposite party.

In *Suryakanth v. Smt. Allamaprabhu alias Allawwa, 2000 CrLJ 120* the Karnataka High Court is of the view that when the proviso gives the power to pass the order *ex parte* which could be either by passing an order under Section 125 Cr.P.C. or placing the other side *ex parte* and proceeding under

Section 125 Cr. P.C. contemplates passing of an order and therefore, it cannot be said that the order passed under Section 125 Cr.P.C. is not an order or that the application under Section 126(2) Cr.P.C. is not maintainable.

Thus it is clear that Chapter IX of the Cr.P.C. itself provides for proceeding *ex parte* and for setting aside *ex parte* order and for this purpose, provisions contained in C.P.C. would not apply.

Impleadment of parties

Under Section 125 Cr.P.C., a wife, a minor child or a child who has attained majority but unable to maintain itself by reason of any physical or mental abnormality and parents are entitled to sue for maintenance. If situation arises, more than one may be joined in one application as claimants and they can sue for maintenance together against one who is bound to maintain all of them. However, the rules regarding joinder of parties in a civil suit does not apply in a proceeding under Section 125 Cr.P.C.

In *Smt. Radhamani v. Sonu, 1986 CrLJ 1129* where the wife had not joined her two minor sons, the MP High Court was of the view that this irregularity cannot come in the wife's way for claiming the maintenance. The Court, further opined that there cannot be too great an insistence on technicality, and practical justice has to be handed down, without being too rigid in the matter of requirement of the provisions.

Compromise

There is no provision in Chapter IX of the Cr.P.C. like that contained in Order XXIII of the C.P.C. which enables the Magistrate to dispose of an application for maintenance under Section 125 Cr.P.C. on the basis of compromise arrived at between the parties.

In this regard the Madras High Court in *Padmanabhan v. Bama, 1988 CrLJ 1386,* is of the view that it is within the competence of the Magistrate to accept a compromise made by the parties and to pass an order under

Section 125 Cr.P.C. giving effect to the terms agreed between parties as to the rate of maintenance.

In *Sailesh Padhan v. Harabati Padhan, 1989 CrLJ 1661* the Orissa High Court has held that if the compromise is entered into between the parties and it forms a part of the order, it must be taken to be a competent one under Section 125(1) Cr.P.C. since the compromise is not in derrogation of the jurisdiction of the Court to pass the order.

In *Hashim Hussain v. Smt. Rukaiya Bano, 1979 CrLJ 1143* the Allahabad High Court has held that Section 125 Cr. P. C. does not prescribe any particular form in which the final order of the Magistrate should be passed while granting maintenance. It was open to the Magistrate while deciding the case in terms of the compromise to specify each and every condition in his order which was included in the compromise. No justification for the submission that an order passed upon a compromise is not contemplated and cannot be passed under Section 125 (1) Cr. P. C. It is really the pith and the substance of the order which has to be taken into consideration and not the form in which it is passed.

Ancillary or incidental powers by necessary intendment

It is the settled principle of law that every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim *"ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest*" that means where anything is conceded, there is conceded also anything without which the thing itself cannot exist. Where the statute confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are necessary to its execution. (*Maxwell on Interpretation of Statutes, 11th Edition, Page350*).

Whenever anything is required to be done by law and it is found impossible to do that thing unless something is not authorized in express terms be also done then that something else will be supplied by necessary intendment. Such a construction, though it may not always be admissible, but to advance the object of the legislation under the scheme of Chapter IX of the Cr.P.C. would be admissible. It is well reflected from the exposition

by the Apex Court in *Savitri v. Govind Singh Rawat* (supra) which reads as under:

> "It is the duty of the Court to interpret the provisions in Chap. IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under Section 125 of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application."

Conclusion

It is reveals from the above discussion that in order to decide quickly and summarily a proceeding under Section 125 Cr.P.C. the Courts are competent to take inevitable steps to promote the ends of justice, however, not under the provisions of C.P.C. but under its ancillary or incidental powers possessed by necessary intendment. There is enough room for the apprehension that if the tangled provisions of C.P.C. are held applicable to such proceedings, all the subtleties of such provisions would also require to be observed while applying them which can affect adversely the very purpose of speedy remedy on the grounds of convenience and social order enshrined in Chapter IX of the Cr.P.C.

Though, the proceedings of Chapter IX of the Cr.P.C. are of civil nature, but are dealt with summarily in a Criminal Court for the purpose of speedy disposal. Therefore, such proceedings are wholly governed by the procedure prescribed in the Cr.P.C. and the provisions of C.P.C. are not applicable to such proceedings. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Therefore, it stands to reason that the Court, while dealing with the proceedings under Section 125 Cr. P.C., in exercise of ancillary and incidental powers can take all necessary steps, which are necessary for execution of the legislative intent.

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COMPROMISE IN PROCEEDINGS UNDER SECTION 125 OF THE CODE OF CRIMINAL PROCEDURE

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To claim maintenance allowance under section 125 of the Code of Criminal Procedure is the speedy remedy available to the neglected wife besides regular matrimonial suit. The Magistrates usually come across compromise applications filed by the spouse at different stages of the proceedings u/s 125 Cr.P.C. This subject needs a close study as it relates to the rights of the weaker section of the society namely the neglected wife.

The Supreme Court had an occasion to deal with such a situation in the case of *Madhu Biswas and Swagat Biswas and others- (1998) 2 Supreme Court Cases 359.* The decision in the case is a landmark in respect of compromise between the spouse, and its failure. The factual situation in the above case was as under :-

1. There was a matrimonial dispute between the spouse wherein the wife was granted Rs. 1000/- interim maintenance for herself and equal amount for her minor daughter.

2. In proceeding under section 125 of Cr.P.C. taking into consideration the above orders, the C.J.M. awarded token amount of Rs. 100/- each to the wife and her daughter.

3. The wife moved in revision before the High Court to challenge the order passed by the C.J.M. It came to the notice of the High Court that the parties had compromised in the matrimonial dispute and started living together. But later on the spouse fell apart.

4. The High Court agreed with the argument advanced on behalf of the husband that in view of the compromise the orders of

maintenance could not be revived and the wife was directed to again approach the criminal court for appropriate relief.

The Supreme Court held as under :-

> "3. The matter can be viewed from either angle. It can be viewed that there was a genuine effort by the wife to rehabilitate herself in her matrimonial home but in vain. The previous orders of maintenance in a manner of speaking could at best be taken to have been suspended but not wiped out altogether. The other view can be that the maintenance order stood exhausted and thus she be left to fight a new litigation on a fresh cause of action. Out of the two courses we would prefer to adopt the first one, for if we were to resort to the second option, it would lead to injustice. In a given case the wife may then be reluctant to settle with her husband lest she lose the order of maintenance secured on his neglect or refusal. Her husband on the other side, would jump to impromptu devices to demolish the maintenance order in duping the wife to a temporary reconciliation. Thus, in order to do complete justice between the parties, we would in the facts and circumstances activate the wife's claim to maintenance and put her in the same position as before. Evidently, she has obtained a maintenance order at a figure which was taken into account by the Court of the C.J.M. Taking that into account, we order the husband to pay to his wife and the daughter a sum of Rs. 1000 each, effective from 1.10.1997. The sum of Rs. 12,000 which was earlier ordered by this Court to be paid to the wife and her daughter as arrears of maintenance shall be taken to have been duly paid uptil 30.9.1997, irrespective of the rate of maintenance. This streamlines the dispute between the parties. It is made clear that it is open to the parties to claim such other relief as may be due to him/her by raising matrimonial dispute before the Matrimonial Court.

4. The appeal is, thus, allowed in the manner aforementioned."

A similar question also arose before M.P. High Court in the case of *Ramsingh Vs. Somatbai* and others reported in 2003 (2) M.P.H.T. 180. In this case the question has been decided in much detail. The factual situation in this case was as under :-

1. The J.M.F.C. awarded maintenance allowance to the wife.
2. Husband challenged the order of maintenance in revision. On account of compromise between the spouse the husband got his revision dismissed.
3. Subsequently the wife enforced the order of maintenance before the Magistrate who ordered the husband to pay the arrears of Rs. 3500/- to the wife or else to undergo an imprisonment of 5 months.
4. The husband challenged this order in revision on the ground that in view of the compromise the parties started living together hence the order of maintenance has no force. The Addl. Sessions Judge turned down the objection of the husband.
5. The husband challenged the order of the Addl. Sessions Judge before the High Court under Section 482 of the Cr.P.C.

The High Court upheld order of the Magistrate as well as of the Revisional Court holding that the order of maintenance passed under Section 125 of the Cr.P.C. is not in any way modified, cancelled, varied or vacated under sub-section (4) or (5) of Section 125 of the Code or under Section 127 of the Code on account of any compromise. Reliance is placed on *A.I.R. 1932 Lahore 115 and A.I.R. 1979 S.C. 442.* It is worth reproducing the dictum of the Supreme Court as reported in the case of *Bhupinder Singh Vs. Daljeet Kaur-A.I.R. 1979 S.C. 442- para 6 and 7;*

"6. A contrary position has found favour with the Lahore High Court reported in AIR 1932 Lah. 115. The facts of that case

have close similarity to the present one and the head-note brings out the ratio with sufficient clarity. It reads :-

Shadi Lal, C.J. observed :-

"Now, in the present case the compromise, as pointed out above, was made out of Court and no order under Section 488, Criminal P.C. was made in pursuance of that compromise. Indeed, the order of the Magistrate allowing maintenance at the rate of Rs. 10 per mensem was neither rescinded nor modified, and no ground has been shown why that order should not be enforced. If the husband places his reliance upon the terms of the compromise, he may have recourse to such remedy in a Civil Court as may be open to him. The Criminal Court cannot however take cognizance of the compromise and refuse to enforce the order made by it."

This reasoning of the learned Chief Justice appeals to us.

7. We are concerned with a Code which is complete on the topic and any defence against an order passed under Section 125, Cr.P.C., must be founded on a provision in the code. Section 125 is a provision to protect the weaker of the two parties, namely, the neglected wife. If an order for maintenance has been made against the deserter it will operate until vacated or altered in terms of the provisions of the Code itself. If the husband has a case under Section 125 (4), (5) or Section 127 of the Code it is open to him to initiate appropriate proceedings. But until the original order for maintenance is modified or cancelled by a Higher Court or is varied or vacated in terms of Section 125 (4) or (5) or Section 127, its validity survives. It is enforceable and no plea that there has been cohabitation in the interregnum or that there has been a compromise between the parties can hold good as a valid defence."

On the basis of the above mentioned Precedents the following principles emerge for guidance of the lower Courts:-

1. The order of maintenance cannot be made ineffective on the basis of compromise between the parties unless it is cancelled by the

court (who awarded this) in a duly instituted proceeding for cancellation.

2. The order of maintenance shall remain suspended during the period the parties live together.

3. On failure of compromise the order of maintenance is enforceable for the amount falling due thereafter.

4. The above legal position applies equally to execution of orders of maintenance awarded in matrimonial dispute or proceedings u/s 125 of Cr.P.C.

Practical hints :-

While allowing compromise applications the Magistrates/Family Courts should take precautions to incorporate the above principles in suitable terms in their orders so that there remains no ambiguity and in case of failure of compromise the wife may enforce the order of final maintenance again.

If, in any matrimonial dispute or a proceedings u/s 125 Cr.P.C. compromise takes place after the passing of the order of interim maintenance but before the final adjudication of the case, it is advisable (to protect the interest of the wife and children) to keep the 'lis' pending for a month or two. If after this period the parties report that they are leading harmonious conjugal life and do not want to contest the case on merits, the same may be disposed of with this noting. In such a situation the order of interim maintenance becomes non-existent.

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n.M izfØ;k lfgrk dh /kkjk 125¼1½ d vrxZr ikfjr Hkj.k ik"k.k
राशि dh olyh d lc/k e /kkjk 125¼3½ n-i-l- dk foLrkj

n-i-l- dh /kkjk 125 ¼3½ e ;g iko/kku g fd ;fn dkb 0;fDr ftld fo:) /kkjk 125 ¼1½ n-i-l- d vrxr Hkj.k&ik"k.k gr vkn'k fn;k x;k g] d vkn'k dk vuikyu dju e i;kIr dkj.k d fcuk vlQy jgrk g rk eftLVV dk ;g vf/kdkj g fd mld le{k ml lc/k e lcf/kr 0;fDr }kjk Hkj.k&ik"k.k jkf'k dh olyh gr vkonu iLrr fd; tku ij n-i-l- dh /kkjk 421 e iko/kkfur ifØ;k vulkj 0;frØeh dh txe lifRr dh ddh vkj foØ; }kjk Hkj.k&ik"k.k dh jkf'k mnxfgr dju gr ftyk/kh'k dk ikf/kdr djr g, okjV tkjh djA mDr okjV d fu"iknu d i'pkr iR;d ekl d u pdk; x; ij Hkj.k&ik"k.k ;k vrfje Hkj.k&ik"k.k d HkRr vkj dk;okfg;k d [kp ;k mld fdlh Hkkx d fy; ,l 0;fDr dk ,d ekr rd dh vof/k d fy; vFkok ;fn og mll io pdk fn;k tkrk g rk pdk nu d le; rd d fy; dkjkokl dk nMkn'k Hkh fn;k tk ldrk gA

ijUr bl /kkjk d v/khu n; fdlh Hkh jde dh oLkyh d fy; dkb okj.V rc rd tkjh ugh fd;k tk;xk tc rd ml jde dk mnxghr dju d fy; ml rkjh[k l ftldk og n; gb] ,d o"k dh vof/k d vrj U;k;ky; l vkonu ugh fd;k x;k gA

ijUr ;fn ,lk 0;fDr bl 'kr ij Hkj.k&ik"k.k dju dh iLFkkiuk djrk g fd mldh iRuh mld lkFk jg vkj og ifr d lkFk jgu l bdkj djrh g rk ,lk eftLVV mld }kjk dfFkr bdkj d fdUgh vk/kkjk ij fopkj dj ldrk g vkj ,lh iLFkkiuk d fd; tku ij Hkh og bl /kkjk d v/khu vkn'k n ldrk g ;fn mldk lek/kku gk tkrk g fd ,lk vkn'k nu d fy; U;k; lxr vk/kkj gA

mDr iko/kku e Li"Vhdj.k d ek/;e l ;g Li"V fd;k x;k g fd ;fn ifr u vU; L=h l fookg dj fy;k g ;k og fdlh vU; efgyk dk j[k yrk

g rk og mldh iRuh }kjk mld lkFk jgu l bdkj dju dk U;k; lxr vk/kkj ekuk tk;xkA

bld vfrfjDr ;fn vukond idV djrk g fd vkofndk ¼iRuh½ tkjrk dh fLFkfr e jg jgh g ;k Li"Vhdj.k e nh xb n'kk dk NkMdj fcuk fdlh l;kIr dkj.k vukond ¼ifr½ d lkFk jgu l bdkj dj jgh g ;k ijLij lgefr l ifr&iRuh lkFkd jg jg g rk ,lk lk;kIr dkj.k nf'kr dju ij U;k;ky; olyh dh dk;okgh d lc/k e fopkj djr g; fof/k vulkj vkn'k bl lc/k e /kkjk 125 ¼5½ n-i-l- d rgr tkjh dj ldrk gA

;gk ;g Hkh mYy[kuh; g fd olyh dk;okgh u doy eftLVV d }kjk dh tk ldrh g ftlu Hkj.k&ik"k.k lc/kh vkn'k fn;k g cfYd n-i-l- /kkjk 128 d vulkj ,l Hkj.k&ik"k.k lc/kh fdlh vkn'k dk ioru ,l eftLVV }kjk Hkh fd;k tk ldrk g ftldk lk{kdkjk dh igpku d ckj e rFkk n; HkRrk vkj [kpk vkfn d u fn; tku d ckj e lek?kku gk x;k gk vkj ftld {k=kf/kdkj e og 0;fDr gk ftld fo:) Hkj.k&ik"k.k dk vkn'k fn;k x;k gA ¼bl lc/k e U;k; n"Vkr *oYyHknkl jkepn fo:) vk;k/;k ckb] 1987 ,e-ih-,y-t- 534* n"V0; g½

bl idkj Hkj.k&ik"k.k dh jkf'k dk Hkxrku dju e 0;froe gku ij olyh dk;okgh e vukond d fo:) lcl igy ;g iekf.kr djuk gkxk fd og fcuk fdlh lk;kIr dkj.k d Hkxrku dju l vlQy jgk gA vukond d fo:) dk;okgh dju l io mldh lifRr dk fooj.k fn;k tkuk pkfg; rkfd ;g Li"V gk ld fd vukond lk;kIr lk/ku lEiUu g vkj mll jkf'k olyh tk ldrh gA

e/;in'k mPp U;k;ky; }kjk U;k; n"Vkr *nxkfl/g yk/kh fo:) i eckb] 1990 fØfeuy yk tujy] 2065* e ;g fu/kkfjr fd;k x;k g fd ek= n'; lk/kuk ;k tehu&tk;nkn d vHkko fdlh 0;fDr dk Hkj.k&ik"k.k /kujkf'k vnk dju d nkf;Ro l efDr d ik= ugh cukr g ,o leFk n; d LoLFk 0;fDr dk Hkj.k&ik"k.k dh jkf'k vnk dju d nkf;Rok/khu j[kk tkuk pkfg; fd ,lk 0;froe mlu fcuk lk;kIr dkj.k d fd;k oly okjV tkjh fd; tku ij Hkh

;fn ,lk 0;fDr nkf;Ro dk fuogu ugh djrk g rk ml /kkjk 125 ¼3½ n-i-l- e fofufn"V vof/k dk dkjkokl fn;k tk ldrk gA

olyh dk;okgh e lekU;r% loiFke vukond d fo:) /kkjk 421 n-i-l- e of.kr ifØ;k vulkj mldh py ,o vpy lifRr l jkf'k olyh gr okjV tkjh fd;k tkuk pkfg; rFkkfir vkiokfnd n'kkvk d idj.k dh ifjfLFkfr;k vulkj vif{kr gku ij U;k;ky; vukond d fo:) /kkjk 421 n-i-l- d iko/kkuk d vrxr olyh okjV tkjh fd; fcuk vukond d fo:) lh/k dkjkokl dk vkn'k Hkh n ldrk gA bl lc/k e U;k; n"Vkr *Hkjr fo:) xkerh ckb] 1981 fØfeuy tkr tujy] 789* ,o *Hkkxkjke fo:) Jherh Hkxorh ckb] 1989 ¼1½ ,e-ih- MCY;w- ,u- 287* voykduh; gA

olyh dh dkb Hkh dk;okgh ml rkjh[k l ftl rkjh[k dk og jkf'k n; gb g] ,d o"k dh vof/k d nkjku U;k;ky; e vkonu iLrr dju ij gh ikjHk dh tk ldrh g A ,d o"k dh vof/k d ckn olyh gr vkonu lk= iLrr fd;k tkrk g rc /kkjk 125 ¼3½ n-i-l- d iFke ijUrd e nh xb le; lhek l ckf/kr gku d dkj.k olyh dh dk;okgh d fy; dkb okjV tkjh ugh fd;k tk ldrk gA bl lc/k e U;k; n"Vkr *yीला बाई विरूद्ध कैलाशचंद 2002 ¼4½ ,e-ih-,y-tw- 552 ,o सीमा विरूद्ध कमलेश कुमार शर्मा, 1999 ¼1½ ,e-ih-MCY;w-,u 28* voykduh; gA yfdu ;fn dkb olyh dk;okgh yfcr g vkj mld lk'pkr iuh jkf'k n; gk tkrh g rk ;g vko';d ugh g fd iR;d n; jkf'k d fy; gj ckj lkFkd l vkonu lk= iLrr fd;k tkoA mlh yfcr dk;okgh e ,lh vxkeh vo'k"k jkf'k dh olyh dk;okgh dh tk ldrh gA bl lc/k e e/;in'k mPp U;k;ky; }kjk U;k; n"Vkr *uUgh ckbZ fo:) urjke] 2001 fØfeuy yk tujy 4325 =2001¼4½ ,e-ih-,p-Vh-405 ¼[k.MihB½] dpu ckbZ fo:) johUnz dekj] 2001 ¼1½ ,e-ih-MCY;w-,u- 146* rFkk *vtc jko fo:) jr[kckb] 2005 ¼4½ ,e-ih-,y-tw- 579* voykduh; gA

U;k; n"Vkr ek;k noh fo:) 'kdj yky] 2001 ¼1½ ,e-ih-,y-t- 382 e ;g ifrikfnr fd;k x;k g fd n-i-l- dh /kkjk 125 d rgr vo;Ld d fy;

Hkj.k&ik"k.k dh vf/k&fu.k; fn; tku dh n'kk e /kkjk 125 ¼3½ n-i-l- d iFke ijUrd d rgr micf/kr ,d lky dh ifjlhek ykx ugh gkxh cfYd ifjlhek vf/kfu;e dh /kkjk 6 vkd"V gku l ifjlhek vof/k vo;Ld dh fof/kd fu;kX;rk lekIr gku rd ikjHk ugh gkxhA

iR;d Hkx d fy; jkf'k Hkxrku u dju ij vf/kdre ,d ekg dk dkjkokl dk nM fn;k tk ldrk g rFkk ,d o"k d vnj gh ml o"k dh olyh dh dk;okgh dh tk ldrh gA bl idkj ,d o"k e ckjg 0;froe gku ij iR;d ekg Hkx d fy; ,d&,d ekg d dkjkokl dh ltk dy ckjg ekg rd dh dkjkokl dh ltk mDr dy ckjg Hkx d fy; nh tk ldrh gA

;gk ;g mYy[kuh; g fd e/;in'k mPp U;k;ky; }kjk U;k; n"Vkr *'kcue fo:) they [kku 2007 ¼2½ ,e-ih-,y-t- 111* e ;g er 0;Dr fd;k x;k g fd foxr ckjg ekg l Hkj.k&ik"k.k dh jkf'k olyh gr vkonu lk= iLrr gku ij ml ,d gh 0;froe ekuk tk;xk vkj 0;frØeh dk vf/kdre ,d ekg dk gh dkjkokl fn;k tk ldrk g fdUr bld io ukxij mPp U;k;ky; }kjk U;k; n"Vkr *fdx ,Eijj fo:) c)k e.My xkM] ,-vkb-vkj- ¼36½ 1949 ukxi;j 269* e ;g fu/kkfjr fd;k tk pdk g fd ,d ekg l v/fkd d Hkj.k&ik"k.k dh jkf'k vo'k"k gku ij 0;frØeh dk ,d ekg l vf/kd dk dkjkokl fn;k tk ldrk gA ukxij mPp U;k;ky; d mDr U;k; n"Vkr ifrikfnr fof/k dk e/;in'k mPp U;k;ky; }kjk 'kcue fo:) *they [kku* ¼mijkDr½ e fopkj e ugh fy;k x;k g bl dkj.k io d idj.k *fdx ,Eijj* ¼mijkDr½ e ifrikfnr fof/k ekU; gkxh fd ,d ekg l vf/kd d Hkj.k&ik"k.k dh olyh ;kX; jkf'k vo'k"k gku ij ,d ekg l vf/kd dk dkjkokl vf/kjkfir fd;k tk ldrk gA ¼nf[k; *oyh egkEen fo:) ckry ckb] 2003 ¼2½ ,e-ih-,y-t- 513 i.k ihB½

fdx ,Eijj ¼mijkDr½ e ifrikfnr fof/k dk xtjkr mPp U;k;ky; dh i.k ihB }kjk *l ekVk fo:) xtjkr jkT;] 2009 fØfeuy yk tujy 920* e vulj.k fd;k x;k gA bl lc/k e U;k; n"Vkr *xkj{kukFk [kkM cxyk fo:) egkjk"V jkT;] 2005 fØfeuy yk tujy 3158 ckEc ¼[kMihB½* ,o *dkdY;k*

cEgfu;k fo:) dkdY;k lk|ek] 1991 fØfeuy ykS tujy 07 Hkh n"V0; g ftue Øe'k% ckEc mPp U;k;ky; ,o vk/kin'k mPp U;k;ky; }kjk ;g er 0;Dr fd;k x;k g fd ,d o"k d Hkj.k ik"k.k dh vo'k"k jkf'k dh olyh gr vkonu lk= iLrr gku ij 0;frØeh dk ckjg 0;frØe gku l vf/kdre ckjg ekl d dkjkokl dh ltk nh tk ldrh gA

0;frØeh dju ij dkjkokl dh ltk Hkxr fy; tku l vukond Hkj.k&ik"k.k dh vo'k"k jkf'k vnk dju d nkf;Ro l eDr ugh gk tkrk g D;kfd dkjkokl fn;k tkuk olyh dk ,d rjhdk g u fd nkf;Ro l efDr dkA ¼bl lc/k e U;k; n"Vkr *d/ynhi dkj fo:) l/fjUnj fl/g] ,-vkbZ-vkj- 1989 l/dk 232* voykduh; g½A Hkj.k ik"k.k dh ,lh vo'k"k jkf'k dh olyh e dkjkokl Hkxr yu d mijkr ,lh jkf'k dh olyh vukond dh txe ;k LFkkoj lifRr ;k nkuk dh ddh vkj foØ; d ek/;e l dju gr oLkyh okjV tkjh djd gh dh tk ldrh g vkj 0;frØe gr ,d ckj dkjkokl Hkxr yu d mijkr leku 0;frØe d fy; vukond dk iuZ% dkjkokl ugh fn;k tk ldrk gA

bl idkj /kkjk 125 ¼3½ n-i-l- d iko/kkuk d rgr Hkj.k&ik"k.k dh jkf'k n; gku d fnukd l mldh olyh gr n; fnukd l ,d o"k dh vof/k e olyh gr dk;okgh dh tk ldrh gA dk;okgh d fy; loiFke vFkn.M dh olyh gr fu/kkfjr ifØ;k viukr g, txe ;k LFkkoj lifRRk ;k nkuk dh ddh vkj foØ; }kjk jkf'k mnxfgr dju d fy; okjV tkjh djuk pkfg; vkj rRi'pkr gh 0;frØeh dk iR;d 0;frØe d fy; ,d ekg rd d dkjkokl l Hkh nfMr fd;k tk ldrk gA rFkkfi idj.k dh lex ifjfLFkfr;k dk nf"Vxr j[kr g; vko';d irhr gku ij 0;frØeh d fo:) okjV tkjh fd; fcuk lh/k dkjkokl dk vkn'k Hkh fn;k tk ldrk gA

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IMPOSITION OF SENTENCE CONTEMPLATED U/S 125 (3) CR.P.C. WITHOUT ISSUING WARRANT FOR LEVYING THE AMOUNT DUE – WHETHER POSSIBLE

Section 125 (3) of the Code of Criminal Procedure, 1973 deals with the procedure for enforcement of order of maintenance. It provides:

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

The aforesaid provision speaks that if any person fails without sufficient cause to comply with the order of maintenance, levy warrant should be issued for recovery of amount due.

Imprisonment can be ordered only if distress warrant has been issued and it remains ineffective. So, the normal rule is that Magistrate can not straight away issue warrant of arrest. It is only for the whole or part of each month's allowance that remains unpaid after the execution of levy warrant that imprisonment may be awarded. So, in the first instance warrant of attachment of the property to satisfy the demand of arrears should be issued and if the whole or any part of it remains unpaid after execution of warrant then imprisonment may be awarded. The issue of warrant of attachment and sale is a condition precedent to the issue of a warrant for imprisonment.

The object of maintenance proceedings is not to punish a parent or husband for his past neglect, but to prevent vagrancy by compelling them to make provision for maintenance. Section 125 (3) has been enacted with the object of enabling discarded wives, helpless and deserted children and parents to secure the needful relief and it serves a special purpose of human society. It provides remedy of preventive nature, but certainly not punitive.

Section 125 (3) Cr.P.C. says, "If any person so ordered fails without sufficient cause to comply with the order" only then warrant for levying the

amount due, can be issued. So, Magistrate has to satisfy himself first before issuing the warrant for levying the amount due, that the defaulter has no sufficient cause for non-payment.

Such a course will enable the opposite party to show sufficient cause as to why the order should not be enforced. Apart this, the proviso of Section 125 (3) Cr.P.C. also gives an opportunity to husband, even in the course of execution of maintenance order, to make bonafide offer to maintain his wife. If such offer is made by husband, then Magistrate must enquire from the wife why she is unwilling to go and live with her husband. If arrest warrant is directly issued, non-applicant will not get any opportunity to explain sufficient cause for non-compliance of the order, as provided by Section 125 (3) Cr.P.C.

So real intention of legislature u/s 125 (3) Cr.P.C. is that first of all a show cause notice should be issued to enable the husband to make an offer to maintain his wife by keeping her with him. It is also consistent with the principles of natural justice that a notice should be issued before drastic steps are taken against any person. If warrant of arrest is issued directly before issuing a show cause notice and warrant of levy, the defaulter will not get opportunity to explain the circumstances constituting sufficient cause for non-compliance of the order. The consequences of issuance of arrest warrant are far-reaching and of penal nature. It deprives a person of his personal liberty. So there is need of affording reasonable opportunity to non-applicant before issuing warrant of arrest. For the purpose of enforcement of a maintenance order, the Magistrate is required to follow the procedure prescribed in Section 421 Cr.P.C. The liability can be satisfied only by making actual payment of arrears.

The observations made by Division Bench of our own High Court in *Durga Singh Lodhi v. Prembai and others, 1990 JLJ 307,* which are reproduced hereunder, are pertinent in this respect:

> "Where a person under such obligation to pay maintenance allowance fails, without sufficient cause, to comply with the order granting maintenance, a warrant for the recovery of the amount may be issued on an

> application made to the Court to levy such amount within a period of one year from the date on which it became due. If, despite such a warrant, the maintenance allowance is not paid, the person may even be sentenced to imprisonment for a term which may extend to one month or until payment, if sooner made."

In *Smt. Kuldip Kumar v. Surindar Singh and another, AIR 1989 SC 232* Hon'ble the Supreme Court has held that the scheme of the provision u/s 125 (3) Cr.P.C. is for effecting actual recovery of the amount of monthly allowance, which has fallen in arrears. A person who has been 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. No useful purpose would be served by sending a person to jail, who is liable to pay, instead of providing the sum due to wife or children as the case may be. The liability cannot be taken to have been discharged by sending the person liable to pay the monthly allowance, to jail.

So it is crystal clear that all possible efforts should be made for actual recovery of arrears before sending the person liable to pay, to jail. But the liability of a person under the scheme will not come to an end, merely because he prefers to go to jail.

In *Jagannath Patra v. Purnamasi Saraf and another, AIR 1968 Orissa 35,* it has been held that order issuing simultaneously warrant for attachment and arrest warrant is not in accordance with law. Similar view has also been expressed in *Karnail Singh v. Gurdial Kaur, 1974 Cr.L.J. 38 (P & H) and K. Nityanandan v. B. Radhamani, 1980 Cr.L.J. 1191 (Ker).*

In case of *Ajab Rao v. Rekha Bai and another, 2005 (4) MPLJ 579,* it has been held that 'once the machinery of law was set in motion for recovery of arrears for the amount falling due in future till termination, the Court can always order recovery of the same. Where the applicant persistently evaded payment of maintenance, the action of sentencing him for delay in non-

payment of maintenance after issuing distress warrant is justified. As provision u/s 125 of Cr.P.C. is a social legislation, obstacles have to be overcome and technicalities ignored in order to implement it.'

So, for the enforcement of the order of maintenance, the normal rule is to issue a distress warrant in the manner provided in Section 421 Cr.P.C. for levying fines. But this rule is not invariable. Even warrant of arrest can be issued before levy warrant considering the circumstances of a particular case. If the defaulter flatly denies to make any payment and it seems that his denial is not bonafide, then in such case warrant of arrest can be issued even without issuing levy warrant. In *Bhyogi Ram v. Bhagwati Bai, 1989 MPWN 200* it has been held that if husband is knowingly evading payment of maintenance, technicalities have to be ignored for meeting aim of social purpose and warrant of arrest should be issued.

In case of *Bhure v. Gomati Bai, 1981 Cr.L.J. 789 (MP HC)* it was held that where a husband has flatly refused to make a payment to wife the huge arrears of maintenance amount and persistently behaved in irresponsible manner during the court proceedings, the order sentencing the defaulting husband to imprisonment was justified, even though a distress warrant was not issued in first instance.

So in the light of real spirit of provision of Section 125 (3) Cr.P.C. and above mentioned reasons, the general rule can be said to be that u/s 125 (3) Cr.P.C. sentence can not be imposed without issuing warrant for levying the amount due. But in exceptional circumstances, sentence can be imposed, ignoring technicalities of levy warrant, for the ends of social justice.

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TALAQ- TALAQ- TALAQ

Shashi Mohan Shrivastava
Retd. District Judge

It is a common impression that in Muslims if the word *Talaq* is pronounced thrice i.e. *Talaq- Talaq- Talaq* then *talaq* takes place and the marriage dissolves with immediate effect but the legal position is not as the impression prevails.

Divorce was introduced in English Law more than 100 years back. Prior to coming into force of the Hindu Marriage Act, 1955, divorce was not known amongst Hindus in India but in Romans, Hebrews, lsrailies and others, divorce was recognized. Perhaps Islam is the first religion, which recognized the termination of marriage by way of divorce.

Under the Muslim Law, a marriage is dissolved either by the death of the husband or wife, or by divorce. The husband can dissolve the marriage at his own will. Marriage can be dissolved by mutual consent of husband and wife. Wife can get divorce from her husband but she can not divorce herself without the consent of husband. It is called *Talaq-e-tafweez.* In Muslims, marriage can also be dissolved by judicial process according to the provisions of the 'Dissolution of Muslim Marriage Act, 1939'.

A *talaq* may be effected (i) orally by spoken words or (ii) by a written document called *talaqnama.* The husband may give *talaq* by mere words and no particular form of words is necessary. If, the words are express and well understood, then no proof of the intention is required. In case of ambiguous words, intention must be proved. Even the *talaq* pronounced in absence of wife is valid. A divorce may be pronounced as to come in to effect immediately or it may be made effective from future date. Even it may be effective contingent on the happening of some specified future event. A *talaq,* according to Sunni Law, whether oral or in writing, may be made without witness but according to Shia law two witnesses are necessary for a valid *talaq*.

Divorce was regarded by the Prophet to be the most hateful among all permitted things before the Almighty God because it hurts conjugal happiness and interfered with the proper upbringing of children. The Prophet of Islam is reported to have said 'With Allah, the most detestable of all things permitted is

divorce', and towards the end of his life, he practically forbade its exercise by men without intervention of an arbiter or a judge. The Quran ordains "…..If ye fear a breach between them twain (the husband and the wife) appoint an arbiter from his folk and an arbiter from her folk. If they desire amendment, Allah will make them of one mind ...." *Aquil Ahmad Mohammadon Law (fourteenth edition Page 113).*

The Supreme Court in ***Shamim Ara v. State of U.P., 2002 Cri. L.J. 4726*** (at Page No. 4731 in paras 13 & 14) has approved the views of Mr. Justice Baharul Islaam (later a Judge of the Supreme Court of India) expressed by him in ***Jiauddin Ahmad v. Anwara Begam, (l981) I GLR 358*** and ***Mrs Rukia Khatun vs. Abdul Khalique Laskar, (l981) 1 GLR 375.*** In these two judgments it was observed that though marriage under the Muslim Law is only a civil contract, yet the rights and responsibilities consequent upon it are of such importance to the welfare of humanity, that a high degree of sanctity is attached to it. But in spite of the sacredness of the character of the marriage-tie, Islam recognizes the necessity, in exceptional circumstances, of keeping the way open for its dissolution. Quoting in the judgment several Holy Quranic verses and commentaries thereon by well-recognized scholars of great eminence, the learned judge also expressed disapproval of the statement "the whimsical and capricious divorce by the husband is good in law, though bad in theology" and observed that such a statement is based on the concept that women were chattel belonging to men which the Holy Quran does not brook. The correct law of *talaq*, as ordained by the Holy Quran, is that *talaq* must be for a reasonable cause and preceded by attempts of reconciliation between the husband and the wife by two arbiters one from the wife's family and the other from the husband's, if the attempts fail, *talaq* may be effected.

The legal position, as discussed above, makes it clear that mere pronouncement of word *'talaq'* thrice i.e. *talaq-talaq-talaq* does not dissolve a Muslim marriage unless efforts of reconciliation are made and they prove to be unfruitful. *Talaq* can be pronounced as the last resort to bring the marital relationship to an end.

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तलाकशुदा मुस्लिम स्त्रियों एवम् मुस्लिम संतानों का भरण पोषण

rftUnjfl;g vtekuh
0;ogkj U;k;k/kh"k

i:dfr %

efLye fof/k e fookg dk lfonk d :Ik e fu:fir fd;k g A ,lh lfonk dk vr gku ij ,lh efLye fL=;k ftUg mud ifr u rykd n fn;k g] vFkok ftUgku rykd y fy;k g] d Hkj.k ik"k.k lc/kh vf/kdkjk d lj{k.k d fy, lln }kjk efLye L=h ¼fookg&foPNn ij vf/kdkjk dk lj{k.k½ vf/kfu;e 1986 ikfjr fd;k x;k A ftl jkti= e 19 eb 1986 dk idkf'kr fd;k x;k A iLrr y[k e l{ki e ^^vf/kfu;e ^^ mYyf[kr fd;k tk jgk g A

vf/kfu;e d egRoi.k iko/kkuk ij eFku d io vf/kfu;e dh idfr ij fopkj okNuh; g %& tl fd vf/kfu;e dk iHkko Hkry{kh ¼Retrospective½ g ;k ugh A lkekU; vo/kkj.kk ;g g fd ,lh iR;d fof/k] tc rd ml] vfHk0;Dr :Ik l Hkry{kh ?kkf"kr u dj fn;k x;k gk] mldk iHkko Hkfo";y{kh gkrk g A mDr fl)kUr d vkykd e vf/kfu;e d mic/kk ij fopkj dju d mijkr idV gkrk g fd vf/kfu;e d Hkry{kh gku d lc/k dkb vfHk0;Dr ifriknuk ugh g A ekuuh; mPp U;k;ky; e/;in'k dh io ihB u *Wali Mahmmed v. Batulbai 2003(2) MPLJ (513)* e vf/kfu;e dh idfr ij fopkj fd;k x;k g] ftl mYyf[kr djuk lehphu g %&

> .... It will be thus, seen that Muslim-Women (Protection of Rights on Divorce) Act, 1986 is neither retrospective in operation nor it will have effect of nullifying the orders already made under Section 125 or 127 of Criminal Procedure Code ordering a muslim husband to pay maintenance to his divorced wife prior to the coming into force of the Act of 1986.

vr% ,l idj.k ftue vf/kfu;e ykx gku d io nM ifØ;k lfgrk d iko/kkuk d rgr dk;okfg;k dh xb g bl vf/kfu;e d iHkko'khy gk tku l अकृत या शून्य नहीं हो जाती।

fodYi %

vf/kfu;e d ioRr gku d ckn Hkh ;fn rykd'knk efLye L=h ,o mldk io ifr vkil e lger gk tkr g rc o nM ifØ;k lfgrk d iko/kkuk l 'kkflr gk ldr g A bl lc/k e vf/kfu;e dh /kkjk 5 iko/kku djrh g %&

> ^^;fn /kkjk 3 dh mi/kkjk ¼2½ d v/khu vkonu dh iFke luokb dh frfFk dk rykd'knk L=h ,oe mldk io ifr l;Dr vFkok lkFkd 'kiFki= vFkok vU; ,l ik:Ik e tlk fofgr gk] fyf[kr ?kk"k.kk d }kjk ?kkf"kr dj fd o nM ifØ;k lfgrk dh /kkjk 125 l 128 d iko/kkuk l fofu;fer gkuk pkgr g] ,o ,lk 'kiFki= ;k ?kk"k.kk vkonu dh luokb dju oky U;k;ky; e iLrr dj rk eftLVV rnulkj fuiVkjk djxk A^^

mDr iko/kku e iFke luokb dh frfFk dk Li"V djr g, mYyf[kr fd;k x;k g fd iFke luokb dh frfFk l og frfFk vfHkir g tk vkonu e iR;Fkh dh mifLFkfr d fy, lEeu e fu;r dh x;h g A

तलाकशुदा स्त्री–मुस्लिम विधि अनुसार तलाक साबित करना

vf/kfu;e d ek/;e l lfof/k dh e'kk rykd'knk efLye L=h d vf/kdkjk d lj{k.k dh jgh g] lHkor% blfy, ikjHk e gh vf/kfu;e e rykd'knk L=h dk ifjHkkf"kr fd;k x;k gA

> /kkjk 2 ¼d½%& ^^rykd'knk L=h l og efLye L=h vfHkir g ftldk fookg efLye fof/k d vulkj gvk g vkj ftl efLye fof/k d vulkj mld ifr }kjk rykd n fn;k g] vFkok ftlu

rykd y fy;k g A^^

;fn efLye L=h viu Hkj.k&ik"k.k d fy, vfHkdFku djrh g vkj cpko e mldk ifr ^rykd^ dk vk/kkj yuk pkgrk g rc doy bruk gh lk;kIr ugh g fd og viu fyf[kr dFku e 0;Dr dj fd mlu viuh ifRu dk rykd n fn;k g] ijUr ml ;g lkfcr djuk gkxk fd mlu viuh ifRu dk efLye fof/k d iko/kkuk d vulkj rykd fn;k g A mDr vk'k; dh vfHk0;fDr [kkru ch fo- egjktch] 2000¼3½ ,eih,yt 449 e bl rjg dh x;h g%&

> "... Mere setting up of a plea in the written statement is not proof of divorce and the husband is required to prove that he has given divorce to his wife in accordance with Muslim Law".

तलाकशुदा स्त्री के प्रति उसके पूर्व पति का उत्तरदायित्व

vf/kfu;e dh /kkjk&3 e micf/kr g fd rRle; ioRr fdlh vU; fof/k e dkb ckr gkr g, Hkh rykd'knk L=h&

¼d½ bnnr dh vof/k e viu io ifr l ;fDr;Dr ,oe mfpr 0;oLFkk rFkk Hkj.k ik"k.k dh vkj ml ikIr dju dh gdnkj gkxh A

fopkj.kh; i'u g] fd mnnr dh vof/k i.k gk tku d ckn rykd'knk iRuh d io ifr dk nkf;Ro i.krk lekIr gk tkrk g \ bl i'u ij ekuuh; lokPp U;k;ky; u Mfu;y yrhQ d ekey ¼2001½ 7 ,l lh lh 740 e foLrkjiod vfHkfuf'pr fd;k g] ftl mYyf[kr djuk vR;r egRoi.k g A

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.

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 the iddat period.

3. A divorced Muslim woman who has not remarried and who is not able to maintain herself after the 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.

vo;Ld efLye lirkuk dk Hkj.kik"k.k&firk dk nkf;Ro

egRoi.k i'u ;g g fd vo;Ld efLye lk= rFkk vfookfgr if=;k d Hkj.k ik"k.k d fy, nM ifØ;k lfgrk d iko/kku vkd"V gkr g ;k fQj vf/kfu;e ¼1986½ e gh ,lh lrkuk d Hkj.k&ik"k.k dh lhfer 0;oLFkk g \ lcl igy vf/kfu;e dh /kkjk 3¼1½ ¼[k½ dk mYy[k vko';d g %&

> 3¼1½ ¼[k½ ^^ tgk rykd d igy vFkok ckn e viu cPPkk d Hkj.k&ik"k.k og Lo; djrh gk] rk cPpk d tUe dh rkjh[k l nk lky dh vof/k d fy, viu io ifr l ;fDr;Dr ,oe mfpr 0;oLFkk rFkk Hkj.k&ik"k.k ikIr dju dh gdnkj gkxh A^^

;gk /;ku nu ;kX; rF; g fd vf/kfu;e ¼1986½ d iko/kku rykd'knk efLye L=h d fgrk d lj{k.k l iR;{kr% lcf/kr g vr% ,d efLye L=h ,o i:"k l mRiUu gb lrkuk d Hkj.k&ik"k.k l lcf/kr fgr] vkfJr fgr u gkdj Lor= fgr j[kr g] vkj ,lh fLFkfr e vf/kfu;e ¼1986½ rFkk nM ifØ;k lfgrk d Hkj.k ik"k.k lc/kh iko/kku ¼125&128½ e fdlh rjg dk vfr0;kiu

ugh g vkj ,d efLye firk dk nkf;Ro g fd og i= dh o;Ldrk rFkk i=h d fookg gku rd mud Hkj.k ik"k.k dh 0;oLFkk dj A bl lc/k e ekuuh; lokPp U;k;ky; u uj lck [kkru fo- ekgEen dkfle] 1997 ¼3½ ØkbEl 106 ¼l-dk-½ e 0;Dr fd;k g%&

> "... Whereas the 1986 Act deals with the obligation of a Muslim husband vis-a-vis his divorced wife including the payment of maintenance to her for a period of two years of fosterage of maintaining the infant/infants, where they are in the custody of the mother, the obligation of a Muslim father to maintain the child is governed by section 125 Cr.P.C. and his obligation to maintain them is absolute till they attain majority or are able to maintain themselves, whichever date is earlier. In the case of female children this obligation extend till their marriage".

vrr% iLrr vky[k l fu"d"k fudyrk g fd vf/kfu;e ¼1986½ d iko/kku Hkry{ी प्रभाव नहीं रखते हैं । यदि तलाकशुदा स्त्री एवं उसका पूर्व पति ijLij lger gkr g rc Hkj.k&ik"k.k lc/kh dk;okfg;k e nM ifØ;k lfgrk dh /kkjk ¼125&128½ d iko/kku vkd"V gkr g A rykd'knk L=h d ifr mld io ifr dk lhfer nkf;Ro ugh g A rykd dk vfHkopu gh lk;kIr ugh g oju rykd efLye fof/k d vulkj lkfcr fd;k tkuk Hkh vko';d g rFkk vo;Ld lrkuk d lc/k e vf/kfu;e ¼1986½ rFkk nM ifØ;k lfgrk d iko/kkuk e 0;kIr ugh g] rFkk efLye firk viu vo;Ld lrkuk d Hkj.k ik"k.k d nkf;Rok/khu g A

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PART-II

IMPORTANT LEGAL PROVISIONS

CHAPTER-IX

ORDER FOR MAINTENANCE OF WIFE, CHILDREN AND PARENTS

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

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

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

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

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

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

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

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

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

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

Explanation. – For the purposes of this Chapter,–

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

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

(2) Any Such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

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

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

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

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

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

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

Madhya Pradesh Amendment: In Section 125, in sub-section (1), for the words "five hundred rupees" the words "three thousand rupees" shall be substituted.

[vide M.P. Act 10 of 1998, section 3 (w.e.f. 29.05.1998]

Note: This amendment has been made prior to the enactment of the Code of Criminal Procedure (Amendment) Act, 2001 (Central Act 50 of 2001) whereby the words "not exceeding five hundred rupees in the whole" have been omitted by section 2 (w.e.f. 24.09.2001)].

Amendment of Section 125 – In Section 125 of the Principal Act: –

(i) for the marginal heading, the following marginal heading shall be substituted, namely : –

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

(ii) In sub-section (1) : –

(a) After clause (d), the following clause shall be inserted, namely : –

(b) In the existing para, for the words "a magistrate of the first class may, upon proof of such neglect or refusal,

order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding three thousand rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct", the words "a Magistrate of the first class may upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father, mother, grand father, grand mother at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct" shall be substituted;

(c) After the existing first proviso, the following proviso shall be inserted, namely : –

"Provided further that the relatives in clause (e) shall only be entitled to monthly allowance for maintenance if their sons or daughters are not alive and they are unable to maintain themselves."

[M.P. Act 15 of 2004, Section 3]

126. Procedure.– (1) Proceedings under section 125, may be taken against any person in any district–

(a) Where he is, or

(b) Where he or his wife resides, or

(c) Where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in

the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases: Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the court, the Magistrate may proceed to hear and determine the case ex-parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think list and proper.

(3) The Court in dealing with applications under section 125, shall have power to make such order as to costs as may be just.

127. Alteration in allowance.– (1) On proof of a change in the circumstances of any person, receiving under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil court, any order made under section 125, should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125, in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that–

(a) The woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) The woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,–

(i) In the case where such sum was paid before such order, from the date on which such order was made;

(ii) In any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) The woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to maintenance or interim maintenance, as the case may be, after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a monthly allowance for the maintenance and interim maintenance or any of them has been ordered to be paid under section 125, the civil court shall take into account the sum which has been paid to, or recovered by, such person as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of the said order.

Madhya Pradesh Amendment – In sub-section (1) of Section 127 of the Principal Act, for the words "father or mother" the words "father, mother, grand father, grand mother" shall be substituted.

[Vide The Code of Criminal Procedure (M.P. Amendment) Act, 2004 (Act No. 15 of 2004). Published in M.P. Rajpatra (Asadharan) dt. 6th December 2004 at Page 1047-1048 (2)].

128. Enforcement of order of maintenance.– A copy of the order of maintenance or interim maintenance and expenses of proceeding, as the case may be, shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be, is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance, or as the case may be, expenses, due.

421. Warrant for levy of fine. — (1) When an offender has been sentenced to pay a fine, the court passing the sentence make action for the recovery of the fine in either or both of the following ways, that is to say, it may -

(a) Issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender;

(b) Issue a warrant to the Collector of the district, authorizing him to realize the amount as arrears of land revenue from the movable or immovable property, or both of the defaulters;

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

(2) The State Government may make rules regulating the manner in which warrants under clause (a) of sub-section (1) are to be executed, and

for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

(3) Where the court issues a warrant to the Collector under clause (b) of sub-section (1), the Collector shall realize the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law:

Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

422. Effect of such warrant.—A warrant issued under clause (a) of sub-section (1) of section 421 by any court may be executed within the local jurisdiction of such court, and it shall authorise the attachment and sale of any such property outside such jurisdiction, when it is endorsed by the District Magistrate within whose local Jurisdiction such property is found.

431. Money ordered to be paid recoverable as a fine. — Any money (other than a fine) payable by virtue of any order made under this Code, and the method of recovery of which is not otherwise expressly provided for, shall be recoverable as if it were a fine:

Provided that section 421 shall, in its application to an order under section 359, by virtue of this section, be construed as if in the proviso to sub-section (1) of section 421, after the words and figures "under section 357", the words and figures "or an order for payment of costs under section 359" had been inserted.

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Rules 359. The following rules have been made under sub-section (2) of section 386 (New Section 421) of the Code.

(1) Under sub-section 1 (a) of section 386 of the Code it is in the discretion of the court passing a sentence of fine to issue a warrant for the levy of the amount by attachment and sale of movable property belonging to the offender although the sentence provides for his imprisonment in default. The warrant may be issued only by the court by which the offender is sentenced. *i.e.*, by the judge or magistrate who passes the sentence or by his successor in office (see section 389).

(2) Every warrant issued under section 386, sub-section (1), clause (a) shall be directed for execution to the Tehsildar within whose jurisdiction the offender resides.

(3) If the fine is imposed by a Court of Session, the judge should, in the absence of any special direction to the country in the law under which the fine is imposed, direct the warrant to the District Magistrate, who will endorse it to the tahsildar to whom he would direct such a warrant if he issued it himself.

(4) All warrants addressed to or issued by a tahsildar shall be executed by the staff of revenue persons attached to the tahsil. Peons are prohibited from receiving any money tendered by an affender and must in every case, as far as possible, execute the warrant entrusted to them, leaving the defaulter to make his own arrangements for paying the amount due before the sale takes place under sub-rule (5).

(5) (i) Except in the case of perishable property at least a week shall ordinarily be allowed to elapse between attachment and sale, so as to give time for notice of the intended sale to reach those interested.

(ii) If the attachment is objected to, the objection should be summarily enquired into and disposed of by the officer executing the

warrant either by admitting the claim or by referring the objector to a civil action if his claim seems prima facie groundless. In the latter case the sale of the property seized shall be stayed for such time as may appear reasonable in order to give the objector an opportunity of establishing his right. If, however, the nature of the property is such that an immediate sale would be for the benefit of the owner, the sale shall be effected and the proceeds shall be held in deposit for such time as aforesaid.

(iii) Sale shall ordinarily be effected by auction, and on fixed days, preferably bazar days, at the tahsildar's or any magistrate's court, during the hours of public business.

(iv) The amount of fine is fully levied when the gross sale-proceeds equal such amount, and any expense attendant on the attachment and sale shall form a per contra charge against revenue from fines.

(6) When a tahsildar has realized a fine or part of a fine in the manner above provided, he shall forthwith dispose of it in the manner prescribed for the disposal of fine's and return the warrant to the magistrate who issued it with an endorsement that he has done so. In the endorsement shall be noted the date of payment into the treasury and the number of the treasury receipt. If the offender is in jail, the magistrate shall at once notify the payment to the superintendent of the jail. The necessary entries shall then be made by the magistrate in the fine registers and the warrant shall be attached to the file of the case.

(7) The District Magistrate to whom a warrant has been directed by a Court of Session shall, on return of the warrant by the tahsildar, at once for ward the warrant to the Court of Session, and, if the offender is in jail send the requisite intimation to the superintendent of the jail where the offender is confined, nothing on the warrant that he has done so.

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THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

1. Short title and extent.—(1) This Act may be called The Muslim Women (Protection of Rights on Divorce) Act, 1986.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "divorced woman" means a Muslim woman who was married according to Muslim law, and has been divorced by, or has obtained divorce from, her husband in accordance with Muslim law;

(*b*) "*iddat* period" means, in the case of a divorced woman,—

(*i*) three menstrual courses after the date of divorce, if she is subject to menstruation;

(*ii*) three lunar months after her divorce, if she is not subject to menstruation; and

(*iii*) if she is enceinte at the time of her divorce, the period between the divorce and the delivery of her child or the termination of her pregnancy, whichever is earlier;

(*c*) "Magistrate" means a Magistrate of the First Class exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the divorced woman resides;

(*d*) "prescribed" means prescribed by rules made under this Act.

3. *Mahr* or other properties of Muslim woman to be given to her at the time of divorce.—(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to—

(*a*) a reasonable and fair provision and maintenance to be made and paid to her within the *iddat* period by her former husband;

(*b*) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and

paid by her former husband for a period of two years from the respective dates of birth of such children;

(*c*) an amount equal to the sum of *mahr* or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(*d*) all the properties given to her before or at the time of marriage or after her marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of *mahr* or dower due has not been made or paid or the properties referred to in clause (*d*) of sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make an application to a Magistrate for an order for payment of such provision and maintenance, *mahr* or dower or the delivery of properties, as the case may be.

(3) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that—

(*a*) her husband having sufficient means, has failed or neglected to make or pay her within the *iddat* period a reasonable and fair provision and maintenance for her and the children; or

(*b*) the amount equal to the sum of *mahr* or dower has not been paid or that the properties referred to in clause (*d*) of sub-section (1) have not been delivered to her,

make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such *mahr* or dower or the delivery

of such properties referred to in clause (*d*) of sub-section (1) to the divorced woman:

Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

(4) If any person against whom an order has been made under sub-section (3) fails without sufficient cause to comply with the order, the Magistrate may issue a warrant for levying the amount of maintenance or *mahr* or dower due in the manner provided for levying fines under the Code of Criminal Procedure, 1973 (2 of 1974), and may sentence such person, for the whole or part of any amount remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one year or until payment if sooner made, subject to such person being heard in defence and the said sentence being imposed according to the provisions of the said Code.

4. Order for payment of maintenance.—(1) Notwithstanding anything contained in the foregoing provisions of this Act or in any other law for the time being in force, where a Magistrate is satisfied that a divorced woman has not re-married and is not able to maintain herself after the *iddat* period, he may make an order directing such of her relatives as would be entitled to inherit her property on her death according to Muslim law to pay such reasonable and fair maintenance to her as he may determine fit and proper, having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of such relatives and such maintenance shall be payable by such relatives in the proportions in which they would inherit her property and at such periods as he may specify in his order:

Provided that where such divorced woman has children, the Magistrate shall order only such children to pay maintenance to her, and in the event of any

such children being unable to pay such maintenance, the Magistrate shall order the parents of such divorced woman to pay maintenance to her:

Provided further that if any of the parents is unable to pay his or her share of the maintenance ordered by the Magistrate on the ground of his or her not having the means to pay the same, the Magistrate may, on proof of such inability being furnished to him, order that the share of such relatives in the maintenance ordered by him be paid by such of the other relatives as may appear to the Magistrate to have the means of paying the same in such proportions as the Magistrate may think fit to order.

(2) Where a divorced woman is unable to maintain herself and she has no relatives as mentioned in sub-section (1) or such relatives or any one of them have not enough means to pay the maintenance ordered by the Magistrate or the other relatives have not the means to pay the shares of those relatives whose shares have been ordered by the Magistrate to be paid by such other relatives under the second proviso to sub-section (1), the Magistrate may, by order, direct the State Wakf Board established under section 9 of the Wakf Act, 1954 (29 of 1954), or under any other law for the time being in force in a State, functioning in the area in which the woman resides, to pay such maintenance as determined by him under sub-section (1) or, as the case may be, to pay the shares of such of the relatives who are unable to pay, at such periods as he may specify in his order.

5. Option to be governed by the provisions of sections 125 to 128 of Act 2 of 1974.—If, on the date of the first hearing of the application under sub-section (2) of section 3, a divorced woman and her former husband declare, by affidavit or any other declaration in writing in such form as may be prescribed, either jointly or separately, that they would prefer to be governed by the provisions of sections 125 to 128 of the Code of Criminal Procedure, 1973 (2 of 1974) and file such affidavit or declaration in the Court hearing the application, the Magistrate shall dispose of such application accordingly.

Explanation.—For the purposes of this section, "date of the first hearing of the application" means the date fixed in the summons for the attendance of the respondent to the application.

6. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the foregoing power, such rules may provide for—

(*a*) the form of the affidavit or other declaration in writing to be filed under section 5;

(*b*) the procedure to be followed by the Magistrate in disposing of applications under this Act, including the serving of notices to the parties to such applications, dates of hearing of such applications and other matters;

(*c*) any other matter which is required to be or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

7. Transitional provisions.—Every application by a divorced woman under section 125 or under section 127 of the Code of Criminal Procedure, 1973 (2 of 1974) pending before a Magistrate on the commencement of this Act, shall, notwithstanding anything contained in that Code and subject to the provisions of section 5 of this Act, be dispose of by such Magistrate in accordance with the provisions of this Act.

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Maintenance and Welfare of Parents and Senior Citizens Act, 2007 passed by the Central Government has been enforced in Madhya Pradesh vide ***Notification No. F. 3-74-2008-XXVI-2 dated the 22nd August, 2008*** and published in M.P. Rajpatra (Asadharan) dated 23.08.2008 Page 1037.

In this Special Act, the jurisdiction for maintenance is conferred to the Maintenance Tribunal in Madhya Pradesh vide Notification No. F. 1-22-2009-XXVI-2 dated the 2nd July, 2009. The State Government has constituted a Maintenance Tribunal for each district of the State for the purpose of adjudication and deciding upon the order for maintenance under Section 5 of the said Act and its Presiding Officer has been nominated to an officer not below the rank of Sub Divisional Officer of the District.

Therefore, the Judicial Magistrates have no jurisdiction to entertain any application under this Act but Section 12 and Proviso to Section 14 are relevant for all the Criminal Courts which reads as under:

Section 12. Option regarding maintenance in certain cases. – Notwithstanding anything contained in Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) where a senior citizen or a parent is entitled for maintenance under the said Chapter and also entitled for maintenance under this Act may, without prejudice to the provisions of Chapter IX of the said Code, claim such maintenance under either of those Acts but not under both.

Section 14. Award of interest where any claim is allowed. – Where any Tribunal makes an order for maintenance made under this Act, such Tribunal may direct that in addition to the amount of maintenance, simple interest shall also be paid at such rate and from such date not earlier than the date of making the application as may be determined by the Tribunal which shall not be less than five per cent, and not more than eighteen person,:

Provided that where any application for maintenance under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) is pending before a Court at the commencement of this Act, then the Court shall allow the withdrawal of such application on the request of the parent and such parent shall be entitled to file an application for maintenance before the Tribunal.

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PART-III

NOTES ON JUDICIAL PRONOUNCEMENTS OF SUPREME COURT & HIGH COURTS

I. CONSTITUTIONALITY

A. *ACT OF 1986 DEPRIVING MUSLIM WOMEN FROM APPLICABILITY OF SECTION 125 CR.P.C. – NOT UNCONSTITUTIONAL*

1. POINT INVOLVED

S.125 Cr.P.C., Articles 14, 15 and 21 of Constitution of India and Ss. 3 and 4 of Muslim Women (Protection of Rights on Divorce) Act 1986 – Constitutionality of an Act – Maintenance – Constitutional validity of – Right of Divorced Muslim women to be paid maintenance under S. 3 of the Act – Muslim husband is liable to make reasonable and fair 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 under S. 4 of Act against her relatives or Wakf Board for Maintenance– Such a Scheme provided under Act is also equally beneficial like one provided under S. 125 of Cr. P. C. i.e. to avoid vagrancy – Therefore Act depriving Muslim woman from applicability of S. 125 Cr.P.C. not discriminatory unconstitutional.

Parties – ***Danial Latifi v. Union of India***

Reported in – 2001 CRI. L. J. 4660

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II. JURISDICTION

A. *JURISDICTION OF FAMILY COURT U/S 125 CR.P.C.*

2 . POINT INVOLVED

S. 125 CrPC and Ss. 7 and 20 of Family Courts Act, 1984 – Family Court– Maintenance – Jurisdiction– Petition for maintenance u/s125 of the Code – Family Court has exclusive jurisdiction.

Parties – ***Shabana Bano v. Imran Khan***

Reported in – 2010 CRI. L. J. 521 (SC)

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3. POINT INVOLVED

* **S.125** – Maintenance – Family Court – Application for grant of maintenance – Bar as to – Filing of case under S. 125 under Cr.P.C. is not barred under S. 8 of Family Courts Act – Decree for dissolution of marriage passed by Family Court at 'L' – Subsequent application by wife, for grant of maintenance under S. 125 Cr. P.C. before Magistrate at 'G' – Is not barred – Especially when there is no Family Court at 'G'.
* **S.125** – Maintenance – Agreement to surrender right to maintenance – Is an agreement against spirit of law and opposed to public policy – Does not bind parties – Wife is entitled for grant of maintenance even though she has entered into any such agreement.

Parties – ***Rajesh Kochar v. Reeta Kumari***

Reported in – 2002 CRI. L. J. 3357 (PATNA)

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B. *APPLICATION BY PARENTS – PLACE OF – TO BE FILED WHERE PERSON FROM WHOM MAINTENANCE IS CLAIMED LIVES*

4. POINT INVOLVED

S.126 – Maintenance – Place of making application – Application by parents – Has to be filed where person from whom maintenance is claimed lives.

Parties – ***Vijay Kumar Prasad v. State of Bihar***

Reported in – 2004 CRI. L. J. 2047

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III. WIFE: MEANING OF

A. *MAINTENANCE U/S 125 CR.P.C. – WIFE DO NOT INCLUDE WOMAN NOT LAWFULLY MARRIED*

5. POINT INVOLVED

S.125 – Estoppel – Principles – Maintenance – 'Wife' – Scope – Cannot be enlarged to include woman not lawfully married – Plight of woman unwittingly entering into wedlock with married man – Can only be undone by Legislature – Principle of estoppel cannot be pressed to defeat S. 125.

Maintenance – Entitlement – Cannot but be decided by reference to personal law of parties.

Parties – ***Savitaben Somabhai Bhatiya v. State of Gujarat***

Reported in – 2005 CRI. L. J. 2141 (SC)

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B. *DIVORCED WOMAN CONTINUES TO ENJOY STATUS OF WIFE FOR CLAIMING MAINTENANCE*

6 . POINT INVOLVED

S.125(4) – Maintenance allowance – Divorced woman continues to enjoy status of 'wife' for claiming Maintenance – Plea that divorce was on account of desertion by wife, irrelevant.

Parties – *Rohtash Singh v. Ramendri*

Reported in – 2000 CRI. L. J. 1498 = AIR 2000 SC 952 = 2000 AIR SCW 715

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C. *APPLICATION FOR MAINTENANCE BY DIVORCED WIFE WHO HAS NOT REMARRIED – MAINTAINABLE*

7. POINT INVOLVED

Ss.125(1), 125(2) and 127(3) – Maintenance– Application for maintenance by divorced wife who has not remarried – Maintainable, though she remarried subsequent to filing of application.

Parties – *Ramesh Chandra v. Beena Saxena*

Reported in – 1982 CRI. L. J. 1426

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D. *DIVORCED WIFE HAS A RIGHT TO MAINTENANCE*

8. POINT INVOLVED

S.125(1), Expln.(b) – Maintenance – Divorced wife has a right to claim Maintenance allowance.

Parties – *Bai Tahira v. Ali Hussain Fissalli*

Reported in – 1979 CRI. L. J. 151 (SC)

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E. *SPOUSES LIVING SEPARATELY BECAUSE OF DIVORCE – WIFE IS ENTITLED TO MAINTENANCE*

9. POINT INVOLVED

S.125(4), Expln. and S.125(1), Expln. B – Maintenance – Words & Phrases – Spouses living separately because of divorce – Cannot be said to be living separately by mutual consent – Wife is entitled to maintenance.

Parties – ***Molyabai v. Vishram Singh***

Reported in – 1992 CRI. L. J. 69 (M.P.)

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10. POINT INVOLVED

S.125(4) – Maintenance – Contract – Maintenance to divorced wife – Divorce obtained by mutual consent – Would not preclude wife from claiming maintenance till she re–marries or is unable to maintain herself – Fact that in compromise she agreed not to claim any maintenance would be immaterial since any such agreement which is opposed to public policy would not be enforceable.

Parties – ***Mahesh Chandra Dwivedi v. State of U. P.***

Reported in – 2009 CRI. L. J. 139 (ALL.)

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F*. NATRA FORM OF MARRIAGE NOT A VALID MARRIAGE IN THE EYES OF LAW*

11. POINT INVOLVED

S.125 – *Natra* form of marriage not a valid marriage in the eyes of law – Wife not entitled to claim maintenance u/s 125 – Law explained.

Parties – ***Gajraj v. Fulkunwar alias Fulwati Bai and another***

Reported in – 2005 (2) Vidhi Bhasvar 193

IV. NEGLECT OR REFUSAL TO MAINTAIN-

A. HUSBAND IS LIVING WITH ANOTHER WOMAN – JUSTIFIES REFUSAL OF WIFE TO LIVE WITH HUSBAND

12. POINT INVOLVED

S.125 – Maintenance to wife – "Neglect or refusal by husband to maintain her"– Fact that husband is living with another woman– Justifies refusal of wife to live with husband – Wife entitled to maintenance as it amounts to neglect or refusal by husband to maintain her.

Parties – ***Rajathi v. C. Ganesan***

Reported in – 1999 CRI. L. J. 3668 = AIR 1999 SC 2374 = 1999 AIR SCW 2490

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B*. IMPOTENCY IS SUFFICIENT GROUND FOR WIFE TO LIVE SEPARATELY*

13. POINT INVOLVED

S.125 – Maintenance – Ground of, impotency of husband – Failure on part of husband of sexual life – Husband unable to gain potency – Sufficient ground for wife to live separately – Wife entitled for Maintenance.

Parties – ***Ashok Kumar Singh v. VIth Addl. Sessions Judge, Varanasi***

Reported in – 1996 CRI. L. J. 392

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C. IMPOTENCY OF HUSBAND AMOUNTS TO CRUELTY

14. POINT INVOLVED

S. 125(3), Second Proviso – Maintenance – Muslim Law – Hindu Law – Marriage – Impotency of husband amounts to cruelty – Wife refusing to live with her husband on ground of impotency – It is a just cause and she is entitled to maintenance.

Parties – *Sirajmohmedkhan v. Hafizunnisa Yasinkhan*

Reported in – 1981 CRI. L. J. 1430 (SC)

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***D**. APPREHENSION OF PHYSICAL HARM AS A GROUND FOR WIFE TO LIVE SEPARATELY*

15. POINT INVOLVED

S. 125(3), Second Proviso – Maintenance – Dowry – Apprehension of physical harm on part of wife due to persistent demand of dowry – It is just ground for wife's refusal to live with husband.

Parties – *Sirajmohmedkhan v. Hafizunnisa Yasinkhan*

Reported in – 1981 CRI. L. J. 1430 (SC)

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***E**. SECOND MARRIAGE BY HUSBAND IS SUFFICIENT REASON FOR WIFE TO LIVE APART*

16. POINT INVOLVED

S.125 – Maintenance – Wife staying with parent for couple of months – Purpose was to attend ailing mother – No desertion – Second marriage by husband during that period –Sufficient reason for wife to live apart – Wife, held, entitled for maintenance.

Parties – *Gangabai v. Shriram*

Reported in – 1991 CRI. L. J. 2018 (M.P.)

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F. *CRUELTY BY MOTHER-IN-LAW IS SUFFICIENT GROUND FOR WIFE'S REFUSAL TO LIVE WITH HUSBAND*

17. POINT INVOLVED

S.125(3) – Maintenance – Grounds for wife's refusal to live with husband – Cruelty – Cruelty by mother-in-law is sufficient.

Parties – *Radhamani v. Sonu*

Reported in – 1986 CRI. L. J. 1129 (M.P.)

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G. *HUSBAND BECOMING "SADHU" DOESN'T ABSOLVE HIM FROM DUTY TO MAINTAIN HIS WIFE AND CHILDREN*

18. POINT INVOLVED

S.125 – Maintenance – Grant of – Husband becoming "Sadhu" – Does not absolve him from duty to maintain his wife and children.

Parties – *Hardev Singh v. State of U.P.*

Reported in – 1995 CRI. L. J. 1652 (ALL.)

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H. *WRITTEN CONSENT OF WIFE FOR SECOND MARRIAGE WOULD NOT DEBAR HER TO LIVE SEPARATELY*

19. POINT INVOLVED

Maintenance – Wife living separately after second marriage of husband – Unable to maintain herself – Entitled to maintenance – Even written consent of wife for second marriage would not debar her to live separately for the conduct and cruelty of husband with her.

Parties – *Ansuiya Bai v. Nawaslal*

Reported in – 1991 CRI. L. J. 2959 (M.P.)

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I. *WIFE AND HER FATHER SHOWING THAT THEY WERE INTERESTED ONLY IN MAINTENANCE THOUGH HUSBAND WAS WILLING TO TAKE HER – WIFE NOT ENTITLED TO MAINTENANCE*

20. POINT INVOLVED

S.125 – Maintenance – Grant of – Wife alleged to be ill-treated by husband and turned out from house – Husband alleged to have contracted second marriage – Said fact not disclosed to anybody except her father and no complaint was lodged in community panchayat or at police station – Second marriage by husband not proved – Evidence that wife was earning 20/25 rupees per day and was residing away from her husband since last 12 years – Delay in filing Maintenance application, not explained by wife – Behaviour of wife and her father showing that they were interested only in Maintenance amount and though husband was willing to take her she did not go –In circumstances setting aside order of maintenance – Proper.

Parties – *Chandrakalabai v. Bhagwansingh*

Reported in – 2002 CRI. L. J. 3970 (M.P.)

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J. *DIVORCED WIFE HAS RIGHT TO MAINTENANCE*

21. POINT INVOLVED

S.125 – Maintenance – Claim for, maintenance allowance – Neglect by husband – Proof.

S.125 requires, as a *sine qua non* for its application, neglect by husband or father. Where in a petition by a divorced wife u/s 125 the husband did not examine himself to prove that he was giving allowances to the

divorced wife, his case, on the contrary, was that she had forfeited her claim because of divorce and the earlier consent decree –Held, the husband had no case of non-neglect and hence the basic condition of neglect to maintain was satisfied. ***Cri. Appln. No. 1379 of 1975, D/- 20-10-1975 (Bom)***, Reversed.

S.125(4) – Maintenance – No allowance if parties are living separately by mutual consent – Claim by divorced wife – Proof that she was not living separately by mutual consent is not necessary– Sub-s. (4) does not apply.

S.127(3)(b) CrPC – Maintenance – Claim for maintenance by Muslim divorced wife – Payment of mehar money– When absolves husband– Payment 'under any customary or personal law' – Purpose stated.

Parties – *Bai Tahira v. Ali Hussain Fissalli*

Reported in – 1979 CRI. L. J. 151 (SC)

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K. *PROOF OF VALID REASON FOR LIVING SEPARATELY IS NECESSARY*

22. POINT INVOLVED

S.125 – Maintenance, eligibility therefor – Unless the applicant proves any valid reason for living separately, she is not entitled to get maintenance.

Parties – *Shashikala Bai (Smt.) v. Mahendra Singh*

Reported in – 2014 (IV) MPJR 164

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V. UNABLE TO MAINTAIN: MEANING OF

A. *"UNABLE TO MAINTAIN HERSELF" MEANS UNABLE TO MAINTAIN IN WAY SHE WAS LIVING WITH HER HUSBAND*

23. POINT INVOLVED

S.125 – Words and Phrases – Maintenance– Claim by deserted wife– Wife earning some income– Does not disentitle her – Phrase "unable to maintain herself" means unable to maintain herself in way she was living with her husband.

Parties – *Chaturbhuj v. Sita Bai*

Reported in – 2008 CRI. L. J. 727 (SC)

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B. *CLAIM FOR MAINTENANCE BY AN EARNING WIFE – CONSIDERATIONS OF*

24. POINT INVOLVED

S.125 – Maintenance – Earning wife – Earnings however insufficient – Husband earning substantial salary per month – Liable to pay maintenance @ Rs. 5,000/– per month to wife.

Parties – *Minakshi Gaur v. Chitranjan Gaur and Anr.*

Reported in – 2009 AIR SCW 813

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C. *HUSBAND IS LIABLE TO PAY MAINTENANCE IF THE EARNING OF WIFE IS NOT SUFFICIENT TO MAINTAIN HERSELF*

25. POINT INVOLVED

S.125 – Maintenance to earning wife – Husband is liable to pay maintenance if the earning of wife is not sufficient to maintain herself.

Parties – *Minakshi Gaur v. Chitranjan Gaur & Anr.*

Reported in – AIR 2009 SC 1377

26. POINT INVOLVED

S.125 – In the absence of cogent evidence, mere fact that the wife is a qualified post graduate or she is earning something, would not suffice to hold that she is in a position to maintain herself.

Parties – *Sunita Kachwaha and others v. Anil Kachwaha*

Reported in – 2014 (3) JLJ 404

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D. *INABILITY OF WIFE TO MAINTAIN HERSELF IS THE CONDITION PRECEDENT FOR GRANTING MAINTENANCE*

27. POINT INVOLVED

S.125 (1)(a) – Maintenance – 'Unable to maintain herself – Meaning – Inability of wife to maintain herself is the condition precedent for granting Maintenance – Deserted wife at age 50, working as labourer for survival – Entitled to maintenance.

Parties – *Rewati Bai v. Jageshwar*

Reported in – 1991 CRI. L. J. 40 (M.P.)

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28. POINT INVOLVED

S.125 – Maintenance under section 125 CrPC, ingredients and entitlement of – Wife's inability to maintain herself is condition precedent for grant of maintenance.

Parties – *Sunita Kachwaha and others v. Anil Kachwaha*

Reported in – 2014 (3) JLJ 404

E. *ASSERTION BY WIFE THAT SHE IS NOT DOING ANYTHING IS SUFFICIENT TO ATTRACT S. 125*

29. POINT INVOLVED

S.125 – Maintenance – Application by wife – Absence of words "unable to maintain herself" in it – Not fatal – Assertion by wife that she is not doing anything – Sufficient to attract S.125.

Parties – ***Ansuiya Bai v. Nawaslal***

Reported in – 1991 CRI. L. J. 2959 (M.P.)

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F. *DECREE FOR RESTITUTION OF CONJUGAL RIGHTS OBTAINED AGAINST WIFE IS NO BAR*

30. POINT INVOLVED

S.125(3), Second Proviso – Maintenance petition by wife – Decree for restitution of conjugal rights obtained against wife is no bar.

Social object that S.125 Cr.P.C. is intended to serve compels liberal construction and in the absence of any statutory bar the wife's application for maintenance under that section cannot be rejected merely because the husband has obtained a decree for restitution of conjugal rights against her and she declines to comply with it. The second proviso to S.125(3) is in fact intended to meet such a case and the Magistrate can decide if her refusal is justified.

Parties – ***Babulal v. Sunita***

Reported in – 1987 CRI. L. J. 525 (M.P.)

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31. POINT INVOLVED

S.125 - Whether an ex-parte decree for restitution of conjugal rights passed in favour of husband was sufficient to disentitle the wife from claiming maintenance? Held, No.

Parties – ***Prashant Shrivastava v. Smt. Sushma Shrivastava***

Reported in – ILR (2010) M.P., 1216

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G. *INCOME OF WIFE'S FATHER CANNOT BE CONSIDERED AS INCOME OF WIFE*

32. POINT INVOLVED

S.125 – Maintenance – Grant of – Considerations – Evidence on record to the effect that husband used to ill-treat applicant-wife and used to demand dowry from her father – Also, he has admitted to have kept a mistress – Order granting maintenance was proper – Income of her father cannot be considered and individual income of wife has to be seen.

Parties – ***Ramdayal Vaishya v. Anita Kumari***

Reported in – 2004 CRI. L. J. 3669 (M.P.)

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VI. LIABILITY OF A SON/DAUGHTER TO MAINTAIN HIS/HER PARENTS

A. *MARRIED DAUGHTER IS LIABLE TO MAINTAIN HER PARENTS*

33. POINT INVOLVED

S.125(1)(d) – Maintenance – Married daughter – Liable to maintain her parent – Word "his" in Cl. (d) – Includes both male and female children – Purpose of the section is to enforce social obligation.

Parties – ***Vijaya v. Kashirao***

Reported in – 1987 CRI. L. J. 977 = AIR 1987 SC 1100 = AIR 1987 SC 1100 (From : 1986 Cri. L.J. 1399)

B. *STEPMOTHER CANNOT CLAIM MAINTENANCE FROM HER STEPSON*

34. POINT INVOLVED

S.125 – Maintenance – Step-mother cannot claim maintenance from her step son.

Parties – *Rewalal v. Kamlabai*

Reported in – 1986 CRI. L. J. 282 (M.P.)

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VII. WIFE LIVING IN ADULTERY

A. *EXPRESSION "LIVING IN ADULTERY" SHOWING THAT ISOLATED ACT IS NOT SUFFICIENT*

35. POINT INVOLVED

S.125(4) – Adultery – Maintenance – Claim by wife – Resisted by husband on ground that wife was 'living in adultery' – Onus to prove it would be on husband – Expression 'living in adultery' showing that isolated act is not sufficient – Consistent conduct and living in permanent and quasi–permanent adulterous relationship with paramour has to be proved – Failure by husband to prove said fact – Wife entitled to maintenance.

Parties – *Nirmaldas R. Alhat v. Sunita N. Alhat*

Reported in – 2006 CRI. L. J. 2635 (BOMBAY)

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B. *WIFE LIVING TOGETHER WITH ANOTHER MAN AS HUSBAND AND WIFE*

36. POINT INVOLVED

S.125(4) – Maintenance – Grant of – Living in adultery – Wife respondent had been living together with another man in a rented house as husband and wife till they were apprehended by the Police from that house – On facts and circumstances it construed

"Living in adultery" within meaning of S. 125(4) – Hence, order granting maintenance to wife liable to be set aside.

Parties – *Subal Chandra Saha v. Pritikana Saha*

Reported in – 2003 CRI. L. J. 2200 (GAUHATI)

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C*. CONTINUOUS COURSE OF ADULTEROUS CONDUCT IS NECESSARY TO CONSTITUTE "LIVING IN ADULTERY"*

37. POINT INVOLVED

S.125(4) –Maintenance – Bar for grant, in case of wife 'living in adultery" – Said expression speaks of continuous course of adulterous conduct and stray instances are not sufficient, to invoke said bar for granting maintenance.

Parties – *Chanda P. Wadate v. Preetam G. Wadate*

Reported in – 2002 CRI. L. J. 1397 (BOMBAY)

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D. *"LIVING IN ADULTERY" – BURDEN OF PROOF ON HUSBAND*

38. POINT INVOLVED

S.125(4) – Maintenance – Ground of living in adultery – Proof – Husband should prove that there is continued adulterous conduct by wife at or about the time of petition for maintenance – Single or occasional lapse from virtue not sufficient to refuse maintenance.

Parties – *K. Veeriah v. Muthulakshmi*

Reported in – 1999 CRI. L. J. 624 (MADRAS)

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E. *SINGLE ACT OF UNCHASTITY ON PART OF WIFE NOT A GROUND FOR REFUSAL OF MAINTENANCE*

39. POINT INVOLVED

S.125 – Maintenance – Maintenance to wife – Refusal on ground of adultery – Words 'living in adultery' under S. 125(4) – Contemplate continuous course of conduct on part of wife with paramour – Evidence adduced by husband showing only a single act of unchastity on part of wife – Refusal of maintenance – Improper.

Parties – *Naranath Thazhakuniyil Sandha v. Kottayat Thazhakuniyil Narayanan*

Reported in – 1999 CRI. L. J. 1663 (KER.)

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VIII. RIGHT TO MAINTENANCE OF A MUSLIM WOMEN

A. *APPLICATION FOR MAINTENANCE AFTER IDDAT PERIOD IS MAINTAINABLE*

40. POINT INVOLVED

Ss.4 and 5 of Muslim Women (Protection of Rights on Divorce) Act, 1986 – Divorce – Maintenance – Petition by Divorced Muslim woman under Criminal P.C. against husband – Maintainable even after iddat period as long as she does not remarry– Amount of Maintenance to be awarded not to be restricted for iddat period only

Parties – *Shabana Bano v. Imran Khan*

Reported in – 2010 CRI. L. J. 521 (SC)

***B**. MAINTENANCE OF MUSLIM WIFE AFTER DISSOLUTION OF MARRIAGE*

41. POINT INVOLVED

S.125 – Muslim Law – Maintenance – Muslim wife – Dissolution of marriage under Dissolution of Muslim Marriages Act 1939 – Maintenance can be granted to her u/s 125.

Parties – ***Zohara Khatoon v. Mohd. Ibrahim***

Reported in – 1986 CRI. L. J. 556 = AIR 1986 SC 587

•

42. POINT INVOLVED

S.125 (4) – Whether an application under section 125 Cr.P.C., filed by a divorced Muslim women, is maintainable before the Family Court? Held, Yes – ***Danial Latifi v. Union of India, (2001) 7 SCC 740, Khatoon Nisa v. State of U.P., (2014) 12 SCC 646, Shamim Bano v. Asraf Khan, (2014) SCC 636*** and ***Shabana Bano v. Imran Khan, (2010) 1 SCC 666*** relied on.

Parties – ***Shamima Farooqui v. Shahid Khan***

Reported in – (2015) 5 SCC 705

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***C.** IRREGULAR MARRIAGE UNDER MUSLIM LAW – RIGHT TO MAINTENANCE OF WIFE*

43. POINT INVOLVED

S.125 – Muslim Law – Marriage – Maintenance – Marriage by Muslim person with sister of existing wife – Would be irregular and not void – Continues to subsist till terminated in accordance with law – Wife and children of such marriage entitled to maintenance u/s 125.

Parties – ***Chand Patel v. Bismillah Begum and anr.***

Reported in – 2008 AIR SCW 2161

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D. *THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT APPLIES ONLY TO DIVORCED WOMEN AND NOT TO MARRIED WOMEN*

44. POINT INVOLVED

S. 125 -Muslim women may file application for maintenance u/s 125 of Cr.P.C – The Muslim Women (Protection of Rights on Divorce) Act applies only to divorced women and not to married women – *Talaq*,

mode and proof of – Mere plea taken in written statement that husband uttered *Talaq* thrice itself is not sufficient – Evidence must be adduced to prove that pronouncement of *Talaq* claimed at earlier date – If Court notices that there was divorce, application u/s 125 of Cr.P.C. may be treated as an application under the Act of 1986 – Liability of Muslim husband to pay compensation to his divorced wife is not confined to the *iddat* period but for future of the divorced wife.

Parties – ***Iqbal Bano v. State of U.P. and another***

Reported in – (2007) 6 SCC 785

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E. *MUSLIM DIVORCED WOMAN – CLAIM FOR MAINTENANCE*

45. POINT INVOLVED

S.125 – Maintenance – Muslim Law – Muslim divorced woman – Claim for Maintenance – Provisions of Act of 1986 neither retrospective in operation – Nor have

effect of nullifying orders already made under section 125 or 127.

20

Maintenance – Muslim Law – Maintenance Muslim Woman – Mere setting of plea of previous divorce in written statement – Is no proof of divorce so as to disentitle her from claiming Maintenance under S. 125.

Parties – ***Wali Mohammed and etc. v. Batulbai and etc***

Reported in – 2003 CRI. L. J. 2755 (Full Bench) (M.P.)

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F. *APPLICATION U/S 125 CR. P.C. BY DIVORCED MUSLIM WOMAN- COMPLIANCE OF S. 3 & 5 OF 1986 ACT*

46. POINT INVOLVED

S.125 Cr.P.C. and Muslim Women (Protection of Rights on Divorce) Act 1986, S.5, S.3(1)(b) – Muslim Law – Maintenance – Application under S.125 of Code by divorced Muslim women – Non-compliance with provisions of S.3, S.5 of the Act – Does not nullify proceedings under S.125 – Non-joinder of minor children – Mere irregularity.

Parties – ***Abdul Majid v. Kamrunnisa***

Reported in – 1990 CRI. L. J. 2799 (M.P.)

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IX. RIGHT TO MAINTENANCE OF CHILDREN

A. *APPLICATION FOR MAINTENANCE OF CHILDREN IS MAINTAINABLE TILL THEY ATTAIN MAJORITY*

47. POINT INVOLVED

S.125(3) – Maintenance to children – Application for, is maintainable till they had not attained majority – Once children attain

majority, provision of S.125(3) would cease to apply to their cases.

21

Parties – ***Amrendra Kumar Paul v. Maya Paul***

Reported in – 2010 CRI. L. J. 395 (SC)

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B. *RIGHT TO MAINTENANCE OF MUSLIM CHILDREN*

48. POINT INVOLVED

S.125 Cr.P.C. and S.3 of Muslim Women (Protection of Rights on Divorce) Act, 1986 Maintenance – Muslim Law – Right to – Maintenance of Muslim children – They are entitled to claim Maintenance for period till they attain majority or are able to maintain themselves – Females are also similarly entitled till they get married– Right not restricted, affected or controlled by S. 3(1)(b) of Muslim Women (Protection of Rights on Divorce) Act – Children living with divorced wife – Immaterial.

Parties – ***Noor Saba Khatoon v. Mohd. Quasim***

Reported in – 1997 CRI. L. J. 3972= AIR 1997 SC 3280 = 1997 AIR SCW 3343

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C. *DISPUTE OF PATERNITY – SCIENTIFIC TEST-CONSIDERATIONS OF*

49. POINT INVOLVED

S.125 – Maintenance – Grant of, to child – Father disputing paternity of child – Seeking blood test of child – Purpose of his applications is nothing more than to avoid payment of Maintenance, without making any ground whatever to have recourse to the test – Rejection of application – Was proper.

Parties – ***Goutam Kundu v. State of W. B.***

Reported in – 1993 CRI. L. J. 3233 = AIR 1993 SC 2295 = 1993 AIR SCW 2325 (Calcutta)

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D. *LEGITIMACY OF CHILD – CONCLUSIVENESS OF LEGITIMACY*

50. POINT INVOLVED

S.125 – Maintenance – Child– Legitimacy – Child born within 7 months' time after marriage – No claim that it was prematurely born – Facts not conclusive that child is not legitimate – Refusal of maintenance to child held, was improper.

Parties – *Dukhtar Jahan v. Mohd. Farooq*

Reported in – 1987 CRI. L. J. 849 = AIR 1987 SC 1049

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E. *IRREGULAR MARRIAGE UNDER MUSLIM LAW – RIGHT TO MAINTENANCE OF WIFE AND CHILDREN*

51. POINT INVOLVED

S.125 – Muslim Law – Marriage – Maintenance – Marriage by Muslim person with sister of existing wife – Would be irregular and not void – Continues to subsist till terminated in accordance with law – Wife and children of such marriage entitled to maintenance u/s 125.

Parties – *Chand Patel v. Bismillah Begum and Anr.*

Reported in – 2008 AIR SCW 2161

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F. *CLAIM FOR MAINTENANCE BY ILLEGITIMATE CHILD – PROOF OF*

52. POINT INVOLVED

*** S.125** – Maintenance – Claim by illegitimate child – Claimant alleging that respondent was her father – Claim supported by evidence of mother and several other villagers – Birth register showing name similar to respondent's name as her father – Column pertaining to father's name in

school admission form kept blank as expected from unwed mother – Claim liable to be allowed.

[23]

Parties – *Dimple Gupta v. Rajiv Gupta*

Reported in – 2007 AIR SCW 6651

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G. *ILLEGITIMATE CHILD ENTITLED TO INTERIM MAINTENANCE*

53. POINT INVOLVED

S.125 – Maintenance – Interim relief – Illegitimate child entitled to interim relief but not alleged wife in absence of proof of valid marriage.

Parties – *Naresh Chandra v. Reshma Bai*

Reported in – 1992 CRI. L. J. 579 (M.P.)

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H*. UNMARRIED DAUGHTER ENTITLED FOR MAINTENANCE TILL SHE GETS MARRIED*

54. POINT INVOLVED

S.125 – Maintenance – Unmarried daughter – Petitioner bound to maintain her till she gets married – Order granting maintenance from date of petition – Not erroneous – Recording reasons for awarding maintenance from date of petition – Not necessary.

Parties – *Vishwanadhulu Lingaiah v. Vishwanadhulu Kavitha*

Reported in – 2003 CRI. L. J. 961 (A.P.)

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I. APPLICATION BY WIDOWED DAUGHTER-IN-LAW AND GRANDCHILDREN – PARENTS-IN-LAW CANNOT BE DIRECTED TO PAY MAINTENANCE

55. POINT INVOLVED

S.125 – Maintenance – Application by widowed daughter-in-law and grandchildren – Parents-in-law cannot be directed to pay maintenance to them.

Parties – *Ved Parkash v. Leena Kahar*

Reported in – 1996 CRI. L. J. 2703 (PUNJ. & HAR.)

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J. *AN ILLEGITIMATE MINOR CHILD IS ENTITLED TO MAINTENANCE*

56. POINT INVOLVED

S.125 – Even an illegitimate minor child is entitled to maintenance.

Parties – *Sumitra Devi v. Bhikan Choudhary*

Reported in – 1985 CRI. L. J. 528 = AIR 1985 SC 765

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X. INTERIM MAINTENANCE

A. *COURT HAS IMPLIED POWER TO GRANT INTERIM MAINTENANCE U/S 125 (AS IS STOOD BEFORE 2001 AMENDMENT)*

57. POINT INVOLVED

S.125 Cr.P.C. (as it stood before 2001 Amendment) – Maintenance – Interim Maintenance – Court has implied power to grant.

Ss.125 and 354(6) – Judgment – Maintenance – Award of, from date of application – Court need not record special reasons.

Parties – *Shail Kumari Devi v. Krishan Bhagwan Pathak*

Reported in – 2008 CRI. L. J. 3881 (SC)

•

B. *INTERIM MAINTENANCE PENDING FINAL DISPOSAL CAN BE GRANTED*

58. POINT INVOLVED

S.125 – Maintenance – Proceedings under– Interim Maintenance pending final disposal can be granted.

Parties – *Savitri v. Govind Singh*

Reported in – 1986 CRI. L. J. 41= AIR 1986 SC 984

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C. *WIFE VOLUNTARILY RESIDING SEPARATELY AND DENIED FOR CO-HABITATION – NO ORDER OF INTERIM MAINTENANCE*

59. POINT INVOLVED

S.125 – Maintenance – Interim maintenance – Grant of –Wife voluntarily residing separately – Decree for restitution of conjugal right passed against wife – No allegation as to said decree was obtained by playing fraud – Conscious effort on part of husband to reconcile and keeping and maintaining wife – Flat denial for co-habitation by wife without any reasons –Order setting aside order of interim Maintenance by revisional Court –No illegality.

Parties – *Smt. Renu v. Hiralal alias Harish*

Reported in – 2002 CRI. L. J. 2599 (M.P.)

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D. *INTERIM MAINTENANCE – COURT IS NOT REQUIRED TO RECORD EVIDENCE*

60. POINT INVOLVED

S.125, Proviso, S.126, S.295, S.296 and S.461 – Maintenance – Affidavit – Evidence – Criminal Proceedings – Interim maintenance – Grant of – Interpretation of.

S.125 Proviso – Court is not required to record evidence in deciding application for interim maintenance

Parties – *Anupam Talukdar v. Piyali Talukdar*

Reported in – 2009 CRI. L. J. 1846 (CAL.)

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E. *INTERIM MAINTENANCE CAN BE GRANTED EVEN ON AFFIDAVIT*

61. POINT INVOLVED

S.125 – Maintenance – Interim maintenance – Grant of – Interim maintenance can be granted even on affidavit – Plea that interim maintenance cannot be allowed without recording evidence – Not tenable.

Parties – *Suresh v. Lalita*

Reported in – 2002 CRI. L. J. 380 (RAJ.)

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F. *ORDER GRANTING INTERIM MAINTENANCE- REVISION AGAINST SUCH ORDER MAINTAINABLE*

62. POINT INVOLVED

S.125, S.397 (2) – Interim Maintenance – Revision – Order of interim maintenance is not interlocutory order because it affects the right of a person drastically and substantially – Hence, revision against such order maintainable.

Parties – *Aakansha Shrivastava v. Virendra Shrivastava*

Reported in – 2010(3) MPLJ 151 (DB)

63. POINT INVOLVED

Ss.125 & 397 – Maintenance – Revision – High Court – Interim order as to payment of maintenance – Affects rights of party – Is

not interlocutory order – Can be challenged in revision.

Parties – *Mukhtar Ali v. Judge, Family Court, Allahabad*

Reported in – 1999 CRI. L. J. 321 (ALL.)

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G. *COURT CANNOT STRIKE OF THE DEFENCE FOR NON-PAYMENT OF INTERIM MAINTENANCE*

64. POINT INVOLVED

S.125(3) – Maintenance – Civil Procedure – Striking off defence on non–payment of interim maintenance – Court cannot strike off the defence for non–payment of maintenance under S.125(3).

Parties – *Gurvinder Singh v. Murti*

Reported in – 1991 CRI. L. J. 2353 (PUN. & HAR.)

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XI. QUANTUM OF MAINTENANCE & ADJUSTMENTS/SETTELMENT

A. *AMOUNT AWARDED U/S 125 IS ADJUSTABLE AGAINST AMOUNT AWARDED U/S 24 OF HINDU MARRIAGE ACT*

65. POINT INVOLVED

S.125 – Hindu Marriage Act (25 of 1955), S.24 – Maintenance – Maintenance amount and interim alimony – Amount awarded under S. 125 CrPC is adjustable against amount awarded in matrimonial proceedings under S. 24 of Hindu Marriage Act as alimony to wife.

Parties – *Sudeep Chaudhary v. Radha Chaudhary*

Reported in – 1999 CRI. L. J. 466 = AIR 1999 SC 536 =
1998 AIR SCW 3845

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B. *PAYMENT OF MEHAR UNDER MOHAMMEDAN LAW WHETHER AND WHEN RELEASES HUSBAND FROM HIS LIABILITY U/S 125*

66. POINT INVOLVED

S.127(3)(b) – Maintenance – Muslim Law – Payment of Mehar under Mohammedan Law – Whether and when releases husband from his liability u/S.125.

Parties – *Fuzlunbi v. K. Khader Vali*

Reported in – 1980 CRI. L. J. 1249 (SC)

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C. *COMPROMISE AND ACCEPTANCE OF CERTAIN SUM – AFFECT ON MAINTENANCE CLAIM*

67. POINT INVOLVED

S.125 – Maintenance – Divorce proceedings – Out of court settlement between husband and wife –Alleged acceptance of certain sum by way of settlement –Document of settlement clearly showing that settlement was confined only to rights in divorce proceedings – Moreover document of settlement not proved and also not reliable – Sum accepted under settlement –Cannot be said to be in lieu of future Maintenance claims.

Maintenance – Divorce proceedings – Compromise – Acceptance of certain sum for relinquishing Maintenance rights.

Parties – ***Molyabai v. Vishram Singh***

Reported in – 1992 CRI. L. J. 69 (M.P.)

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D. *AMOUNT AWARDED U/S 125 SHOULD BE REASONABLE AND NOT EXCESSIVE*

68. POINT INVOLVED

S.125- For the purpose of fixation of quantum the status of the husband as well as the status of the claimant wife are to be taken into consideration. Perceptibility of the income is not the test. The requirement is potentiality.

Parties – ***Kamla Bai v. Ghanshyam Agarawal***

Reported in – 1998 (1) MPLJ 654

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E. *QUANTUM OF MAINTENANCE, FACTORS TO BE CONSIDERED*

69. POINT INVOLVED

S.125 – Maintenance, grant of – Quantum of maintenance, factors to be considered – Amount whether payable from the date of order or from the date of application? Law explained.

Parties – ***Manju Raghuvanshi v. Dilip Singh Raghuvanshi***

Reported in – 2006 (4) MPLJ 302

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XII. ENHANCEMENT/ALTERATION OF MAINTENANCE

A. *APPLICATION FOR ENHANCEMENT – ORIGINAL APPLICATION IS NOT REQUIRED TO BE AMENDED*

70. POINT INVOLVED

S.125, S.127– Maintenance – Enhancement – Application under S. 125 filed at time when maximum limit of Maintenance was prescribed – Request for enhancement – Plea that original application has not been amended – Too technical to be raised –

Moreover S. 127 of the Code permits increase in the quantum.

Parties – ***Savitaben Somabhai Bhatiya v. State of Gujarat***

Reported in – 2005 CRI. L.J. 2141 (SC)

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B. *DECREE FOR DIVORCE ON THE GROUND OF DESERTION WILL NOT AFFECT ORDER OF MAINTENANCE*

71. POINT INVOLVED

S.125(4) and S.127(2) – Maintenance – Scope of – Order of maintenance passed in favour of wife – Decree for divorce obtained by husband on grounds of desertion – Order of maintenance not liable to be cancelled on this ground.

Parties – ***Mangilal v. Gitabai***

Reported in – 1988 CRI. L. J. 1591 (M.P.)

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C. *RETIREMENT OF HUSBAND*

72. POINT INVOLVED

S.125 – Husband took voluntary retirement after judgment dated 17.02.2012 – Whether

it is a ground for reducing the amount of maintenance? Held, No – It is the obligation of the husband to maintain his wife – He cannot be allowed to plead that he is unable to maintain the wife due to financial constraints as long as he is able to earn.

Parties – ***Shamima Farooqui v. Shahid Khan***

Reported in – (2015) 5 SCC 705

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XIII. PROCEDURE & PROOF

A*. ALLEGATIONS OF DEMAND OF DOWRY AND CRUELTY – NOT PROVED – WIFE NOT ENTITLED TO MAINTENANCE*

73. POINT INVOLVED

S.125 – Maintenance – Application by wife– Allegations of demand of dowry and cruelty by husband – Not supported by evidence on record– Thus reasons given for her ill-treatment, were non-existent – Wife left matrimonial home without any justifiable ground – Not entitled to maintenance.

Parties – ***Deb Narayan Halder v. Anushree Halder***

Reported in – 2003 CRI. L. J. 4470

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B. *PROOF OF MARRIAGE - STRICT PROOF IS NOT REQUIRED*

74. POINT INVOLVED

S.125 – Maintenance – Maintenance proceedings – Performance of marriage– Proof – Strict proof is not required – It is sufficient if claimant *prima facie* satisfies the Court that claimant and her husband

lived as husband and wife – Performance of essential ceremonies need not also be proved.

Parties – *Dwarika Prasad Satpathy v. Bidyut Prava Dixit*

Reported in – 2000 CRI. L. J. 1

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75. POINT INVOLVED

S.125 – Maintenance – Claim for Maintenance – Factum of marriage – Proof as to – Necessity

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.

Parties – *Sumitra Devi v. Bhikan Choudhary*

Reported in – 1985 CRI. L. J. 528 = AIR 1985 SC 765

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76. POINT INVOLVED

S.125 – Second marriage, proof of – Cogent evidence is required to be adduced – Where documentary evidence is available, oral evidence is not sufficient to prove second marriage.

Parties – *Shashikala Bai (Smt.) v. Mahendra Singh*

Reported in – 2014 (IV) MPJR 164

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C*. NEGLECT BY HUSBAND – PROOF THEREOF*

77. POINT INVOLVED

S.125 – Maintenance – Claim for, Maintenance allowance – Neglect by husband – Proof.

S.125 requires, as a *sine qua non* for its application, neglect by husband or father –

33

Where in a petition by a divorced wife u/s 125 the husband did not examine himself to prove that he was giving allowances to the divorced wife, his case, on the contrary, was that she had forfeited her claim because of divorce and the earlier consent decree – Held, the husband had no case of non-neglect and hence the basic condition of neglect to maintain was satisfied. ***Cri. Appln. No. 1379 of 1975, D/- 20-10-1975 (Bom)***, Reversed.

S.125(4) – Maintenance – No allowance if parties are living separately by mutual consent – Claim by divorced wife – Proof that she was not living separately by mutual consent is not necessary– Sub-s. (4) does not apply.

S.127(3)(b) – Maintenance – Claim for maintenance by Muslim divorced wife – Payment of *mehar* money, when absolves husband – Payment 'under any customary or personal law' – Purpose stated.

Parties – ***Bai Tahira v. Ali Hussain Fissalli***

Reported in – 1979 CRI. L. J. 151 (SC)

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D. *POWERS OF MAGISTRATE IN MAINTENANCE PROCEEDINGS*

78. POINT INVOLVED

S.125 – Maintenance – Powers of Magistrate – Maintenance proceedings – Magistrate only has to pass orders after being prima facie satisfied about marital status of parties – Question whether appellant is married wife of respondent who had failed and regulated to maintain her – Said question may have to

be adjudicated in civil proceedings – Pure finding of fact reached by Magistrate cannot be interfered with by High Court.

Parties – *Santosh v. Naresh Pal*

Reported in – 1999 AIR SCW 4700

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E. *MARRIAGE VOID ON ACCOUNT OF EARLIER MARRIAGE – IN SUCH CASE, STRICT PROOF OF EARLIER MARRIAGE CAN BE INSISTED*

79. POINT INVOLVED

S.125 – Marriage – Maintenance – Resistance by husband – Ground, marriage void on account of subsistence of his earlier marriage – Court in such cases should insist on strict proof of earlier marriage by husband – Entries in insurance policy and family identity card issued by employer of husband – Not conclusive proof of marriage.

Parties – *K. Vimala v. K. Veeraswamy*

Reported in – 1991 AIR SCW 754

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F. *EVIDENCE CANNOT BE TAKEN ON AFFIDAVIT*

80. POINT INVOLVED

S.125 Recording of evidence in a case u/s 125 – Evidence cannot be taken on affidavit by resorting to Section 10 (3) of the Family Courts Act, 1984.

Parties – ***Rama Prasanna Tiwari v. Smt. Ashima and another***

Reported in – 2005 (2) MPHT 192

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G. *PROOF OF MARRIAGE IS NOT OF SAME NATURE AS IN CASE OF BIGAMY*

81. POINT INVOLVED

S.125 – Maintenance – Grant of – Marriage and divorce among Gonds – Proof of marriage – Is not of same standard as in a complaint of bigamy for offence under S. 494, I.P.C. Maintenance – Grant of – Customary marriage between wife and respondent – Wife though already married, continuity of earlier marriage at time of her marriage with respondent not proved – Unchastity of wife also not proved – Wife entitled for maintenance.

Parties – ***Kumari Bai v. Anandram***

Reported in – 1998 CRI. L. J. 4100 (M.P.)

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H. *PROOF OF CRUEL TREATMENT WITH WIFE IN MATRIMONIAL HOME – UNCORROBORATED TESTIMONY OF WIFE CAN BE ACTED UPON*

82. POINT INVOLVED

S.125 – It is very difficult to prove cruel treatment with wife in her matrimonial home. If testimony of wife found reliable, even her uncorroborated testimony can be acted upon.

Parties – *Dukalhin Bai v. Ghanshyam Verma*

Reported in – 2000(1) MPWN 59

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I. *APPLICANT AND NON-APPLICANT LIVING TOGETHER AS WIFE AND HUSBAND FOR 20 YEARS – PROOF OF MARRIAGE NOT NECESSARY*

83. POINT INVOLVED

S.125 – Maintenance – Grant of – Applicant and non-applicant living together for 20 years as wife and husband – Relatives also treating them as such – Applicant entitled to maintenance – Strict proof of marriage not necessary.

Parties – *Phoolo Bai Joge v. Beero*

Reported in – 1991 CRI. L. J. 3270 (M.P.)

•

J. *BI PARTE DECISION IS PREFERABLE TO AN EX PARTE ONE*

84. POINT INVOLVED

Maintenance matters – Bi parte decision is preferable to an ex parte one.

Parties – *Babulal v. Sunita*

Reported in – 1987 CRI. L. J. 525 (M.P.)

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K. *MAINTENANCE PROCEEDINGS AND PROCEEDINGS U/S 13 OF HINDU MARRIAGE ACT*

85. POINT INVOLVED

S.125 – Maintenance – Application by wife for maintenance – Mode of dealing with application by Court stated.

S.125 is designed to prevent vagrancy and destitution and provides a summary, and speedy remedy to get maintenance. Thus it has a social purpose to fulfill and in arriving at any finding in relation to an application thereunder, the courts must look to the substance rather than to the form, must avoid

strict technicalities of pleading and proof and must make a realistic approach to the material on record so that the purpose aforesaid is not frustrated.

S.125 CrPC and **S. 13** of **Hindu Marriage Act** – Maintenance – Petition by wife for Maintenance – Omission to state her inability to maintain herself – Effect – No offer by husband to maintain her if she lived with him – Husband suing for divorce –Wife has just cause to live separately – She is entitled to Maintenance.

S.401 and **S.125** – Maintenance – Revision – Order granting Maintenance under S.125 – Revision under S.401 – High Court will not interfere with findings of fact recorded by lower Court unless they are perverse or not based on legal evidence.

Parties – ***Girishchandra v. Sushilabai***

Reported in – 1987 CRI. L. J. 1815 (M.P.)

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L. *MAINTENANCE PROCEEDINGS – APPRECIATION OF EVIDENCE*

86. POINT INVOLVED

Maintenance – Appreciation of evidence in maintenance cases – Evaluation should be pragmatic and not dogmatic.

Parties – *Radhamani v. Sonu*

Reported in – 1986 CRI. L. J. 1129 (M.P.)

•

M. IRREGULARITIES IN MAINTENANCE PROCEEDINGS – EFFECT OF

87. POINT INVOLVED

S.125 – Maintenance – Procedure – Irregularities in maintenance proceedings – Wife not joining her minor sons and trial Court awarding joint Maintenance as claimed by her – Revisional Court had power to apportion the award.

Parties – *Radhamani v. Sonu*

Reported in – 1986 CRI. L. J. 1129 (M.P.)

•

N. *DISMISSAL IN DEFAULT OF MAINTENANCE PROCEEDINGS*

88. POINT INVOLVED

S.126 – Maintenance – Ex parte order granting Maintenance to wife – Setting aside of – Application for – Counsel engaged by applicant husband assured him that he would apprise him of dates on which applicants' personal attendance would be necessary in

Court – However on date case was fixed for argument neither applicants counsel appeared nor did he informed applicant – In such circumstance it cannot be said that applicant remained absent to gain benefit – On contrary he has shown good cause for non appearance – Rejection of application – Improper.

Parties – ***Mirza Hasan Beg v. Ishrat Yasmeen***

Reported in – 2004 CRI. L. J. 4330 (M.P.)

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39

O*. RESTORATION OF MAINTENANCE PROCEEDINGS*

89. POINT INVOLVED

S.125 – Maintenance application – Dismissed in default – Restoration of – Permissibility – Proceedings for maintenance are quasi Civil in nature – Order dismissing maintenance application can be recalled in exercise of inherent powers of criminal Court.

Parties – ***Mandakini B. Pagire v. Bhausaheb Genu Pagire***

Reported in – 2009 CRI. L. J. 70 (Bom.)

•

P. *WORD "INJURY" NEED NOT NECESSARILY DENOTE PHYSICAL INJURY*

90. POINT INVOLVED

S.125(1)(c) – Maintenance – Words And Phrases – Word 'injury' – Meaning – It need not necessarily denote physical injury – It has to be read in context of inability to maintain – Recourse to definition under Penal Code is also not necessary.

Parties – ***Rama Chandra Sahu v. Tapaswini Sahu***

Reported in – 2007 CRI. L. J. 2241 (ORISSA)

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Q*. MAINTENANCE PROCEEDING ARE OF CIVIL NATURE THOUGH GOVERNED BY CR.P.C.*

91. POINT INVOLVED

S.125 – Maintenance – Maintenance Proceedings – Are in reality of civil nature.

The proceedings under S. 125 CrPC are in the nature of civil proceedings. Though they are wholly governed by the procedure of the Code of Criminal Procedure, they are really of civil nature, but are dealt with summarily

in a Criminal Court for the purpose of speedy disposal on grounds of convenience and social order.

Parties – ***Pandharinath Sakharam Thube v. Surekha Pandharinath Thube***

Reported in – 1999 CRI. L. J. 2919 (BOMBAY)

•

R. APPLICATION FOR INTERIM MAINTENANCE CANNOT BE REJECTED ON GROUND THAT IT WAS NOT SIGNED BY THE APPLICANT

92. POINT INVOLVED

S.125 – Maintenance – Interim maintenance – Averment in main petition showing that wife is very poor and begging others – Application for interim maintenance – Cannot be rejected on ground that application was not signed by her, but her counsel.

Parties – ***Balram Argidda v. A. Chandramma***

Reported in – 1997 CRI. L. J. 3976 (BOMBAY)

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S. *MAINTENANCE ORDER DULY DELIVERED, PRONOUNCED, TYPED AND CORRECTED BUT REMAINING TO BE SIGNED DOESN'T RENDERED IT INEFFECTIVE*

93. POINT INVOLVED

S.465, S.482, S.125 – Judgment – Inherent Powers – maintenance – Unsigned judgment – Judgment duly delivered, pronounced, typed and corrected but remaining to be signed due to death of Magistrate – Does not render it ineffective – Application seeking quashing of execution of maintenance order

on ground that judgment is unsigned – Not sustainable.

Parties – ***Kuldip Singh v. Prabhjot***

Reported in – 1995 CRI. L. J. 223 (PUNJ. & HAR.)

•

T. DISMISSAL IN DEFAULT AND RESTORATION – LIBERAL ATTITUDE SHOULD BE ADOPTED

94. POINT INVOLVED

S.125 – Maintenance – Application for maintenance – Dismissal in default – Restoration – Liberal attitude should be adopted while considering cause of non–appearance.

Parties – ***Aruna Kar v. Sarat Dash***

Reported in – 1993 CRI. L. J. 1506 (ORISSA)

•

U. *PROCEEDINGS ARE QUASI CIVIL – RULES OF PLEADING AS APPLY TO CIVIL CASES*

95. POINT INVOLVED

Chap.IX and S.125 – Maintenance – Nature of proceedings – Proceedings are quasi-civil – Rules of pleadings as apply to civil proceedings are not to be totally disregarded

Parties – *Ramchandra Balu Magadum v. Rakhamabai Balu Magadum*

Reported in – 1992 CRI. L. J. 1919 (BOMBAY)

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XIV. ENFORCEMENT OF ORDER

A. *IMPOSITION OF SENTENCE FOR BREACH OF ORDER OF MAINTENANCE*

96. POINT INVOLVED

S.125(3) – Maintenance – Magistrate – Sentence Imposition – Maintenance – Default – Magistrate has power to sentence imprisonment for more than one month – For each breach of order of Maintenance, Magistrate may impose one month imprisonment – Further, proviso to S. 125(3) contemplates application for recovery within 12 months from date of order – Hence,

recovery of amount due for 12 months can be made in one application, and Magistrate may award imprisonment upto 12 months maximum.

Parties – ***Gorakshnath Khandu Bagal v. State of Maharashtra***

Reported in – 2005 CRI. L. J. 3158

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97. POINT INVOLVED

S.125(3) – Maintenance– Non-payment of by husband – Magistrate can only sentence him for a period of one month or until payment, if sooner made – Power to impose sentence cannot be enlarged – Magistrate cannot impose sentence continuing him in custody until payment is made? For breach of order wife can approach Magistrate again for similar relief.

Parties – ***Shahad Khatoon v. Amjad Ali***

Reported in – 1999 CRI. L. J. 5060

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B. *ORDER FOR RECOVERY OF ARREARS MUST BE SPEAKING*

98. POINT INVOLVED

S.401 and S.125 – Maintenance – Revision – Dismissal – Speaking order – Maintenance allowance granted to wife and child – Default in payment by husband – Rejection of application for recovery of arrears by wife – Revision against – Summarily rejection by High Court by non-speaking order - Not proper.

Maintenance – Arrears – Application for recovery – Rejection – Revision – Dismissal by non-speaking order - Improper.

Speaking order – Revision – Summarily rejection by High Court – Must be by speaking order

Women's right – Maintenance – Recovery of arrears – Rejection of application – Revision against – Summarily dismissal – Must be by speaking order.

Parties – ***Kuldip Kaur v. Surinder Singh***

Reported in – 1989 CRI. L. J. 794 = AIR 1989 SC 232 = AIR 1989 SC 232

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C. *SENDING OF HUSBAND TO JAIL IS NOT A MODE OF DISCHARGING LIABILITY*

99. POINT INVOLVED

S.125, S.128 – Maintenance to wife and child – Default in payment – Recovery of arrears– Sending of husband to jail– Is not a mode of discharging liability – It is only a mode of recovery, not a substitute for recovery – Supreme Court

directed to put defaulting husband in jail till he makes payment. ***Cri. Rev.No. 187 of 1982, d/-29-7-1982 (Del)*** Reversed.

Maintenance – Arrears – Recovery – Sending of husband to jail – Not a mode of discharging liability.

Women's right – Maintenance – Application for recovery of arrears by wife – Husband could not be absolved of his liability merely because he prefers to go to jail.

Parties – ***Kuldip Kaur v. Surinder Singh***

Reported in – 1989 CRI. L. J. 794 = AIR 1989 SC 232 = AIR 1989 Supreme Court 232

•

100. POINT INVOLVED

Amount of maintenance of Mahr or dower, recovery of - Whether a person is liable to serve further imprisonment for the same default if amount due is not paid or not recovered in the execution proceedings? Held, no, a person who has already undergone imprisonment cannot be sent to Jail again for the same default - However, such a defaulter is not absolved from his liability to pay the amount which is still recoverable notwithstanding the fact that he has undergone the imprisonment for such failure - Such amount may be recovered in the same manner as provided for levy of fine under the Code of Criminal Procedure except by imposing sentence of imprisonment.

Parties – ***Mohd. Hasib v. Rubina***

Reported in – 2009 (1) MPHT 58

•

D. *ATTACHMENT OF FUTURE SALARY FOR THE RECOVERY OF ARREARS OF MAINTENANCE IS NOT PERMISSIBLE*

101. POINT INVOLVED

Ss.125(3) and 421(1)(b) – Maintenance – Warrant– Scope– Levy of fine Issuance of warrant of attachment of future salary for the purpose of recovery of arrears of maintenance – Not permissible– Proper procedure is indicated in S.421(1)(b).

Parties – ***Ali Khan v. Hajrambi***

Reported in – 1981 CRI. L. J. 682 (SC)

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E. *SUBSEQUENT CO-HABITATION OR COMPROMISE IS A VALID DEFENCE TO EXECUTION OF ORDER OF MAINTENANCE*

102. POINT INVOLVED

S.125 – Maintenance – Order u/S.125 for granting of Maintenance– Whether subsequent co-habitation or compromise is a valid defence to execution of such order.

Held – Any defence against an order passed u/S.125 must be founded on a provision in the Code. S.125 is a provision to protect the weaker of the two parties, namely, the neglected wife – If an order for maintenance has been made against the deserter it will operate until vacated or altered in terms of the provisions of the Code itself – If the husband has a case u/s 125 (4), (5) or 127 of the Code, it is open to him to initiate appropriate proceedings – But until the original order for maintenance is modified or cancelled by a higher court or is varied or

vacated in terms of S.125 (4) or (5) or S.127, its validity survives – It is enforceable and no plea that there has been cohabitation in the interregnum or that there has been a compromise between the parties can hold good as a valid defence.

Parties – ***Bhupinder Singh v. Daljit Kaur***

Reported in – 1979 CRI. L. J. 198 (SC)

•

F. *RECOVERY PROCEEDINGS U/S 128 BY MUSLIM WIFE*

103. POINT INVOLVED

Ss.125, 128 and 482 – Muslim Law – Muslim wife – Maintenance – Recovery

proceedings – Divorced subsequently – No occasion arises to institute proceedings under S. 3 of Muslim Women (Protection of Rights on Divorce) Act, 1986 – Amount of Mahr not paid – Recovery proceedings under S.128 would not lapse for non-exercise of option under S.5 of Act – Proceedings cannot be quashed.

Parties – ***Bashir Khan v. Jamila Bee***

Reported in – 1994 CRI. L. J. 361 (M.P.)

•

104 . POINT INVOLVED

Proceedings u/s 128 of the Criminal Procedure Code to enforce order u/s 125 and 127 of the Code passed prior to enforcement of the Act not prohibited – The provision of section 7 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 do not prohibit the proceedings u/s 128 CrPC to enforce any order u/s 125

or 127 of the code passed prior to enforcement of the Act –The legislature has not included section 128 of the Code in section 7 of the Act – Therefore, the execution under section 128 of the Code is not prohibited by the Act.

Parties – ***Munni Begam v. Abdul Satar***

Reported in – 2001 (1) M.P.L.J. 312

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G. *ABLE-BODIED HEALTHY PERSON HAVING CAPACITY TO EARN MUST BE SUBJECTED TO PAY MAINTENANCE. ABSENCE OF REAL ESTATE IS NO EXCUSE TO ESCAPE LIABILITY*

105. POINT INVOLVED

S.125(1), S.125(3) – Maintenance – Liability for – Absence of real estate – Not excuse to escape liability – Able bodied healthy person having capacity to earn must be subjected to pay Maintenance – Non-compliance of order by such person – He can be sentenced to imprisonment.

Maintenance – Liability for – Person cannot escape liability on account of having no real estate.

Parties – ***Durga Singh Lodhi v. Prembai***

Reported in – 1990 CRI. L. J. 2065 (M.P.)

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H. *MODE OF ISSUING WARRANT FOR RECOVERY OF MAINTENANCE*

106. POINT INVOLVED

S.125(3) – Maintenance – Refusal to pay Maintenance –Imprisonment – Order can be passed without first issuing distress warrant for levying the amount.

An order under Sec. 125(3) for imprisonment of husband for his negligence to pay maintenance can be passed without at first issuing the warrant for levying the amount due. The normal rule is, at first, to try to seek enforcement of the order by issuing the distress warrant in the manner provided in the Code for levying fines, but, this rule is not mandatory, that is, to be necessarily followed in each and every case without considering the attending circumstances of the particular case.

Where the husband avoided appearance, did not pay anything in spite of passing of the order, resisted maintenance during trial by leveling flagrant charges of immorality on part of the wife refused point blank to pay any maintenance it was held that ordering his imprisonment without first issuing distress warrant was proper. It was so when the husband did not possess any immovable property but earned his earning by making *biris* and thus no useful purpose would have been served by issuing distress warrant.

Parties – *Bhure v. Gomatibai*

Reported in – 1981 CRI. L. J. 789 (M.P.)

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I. *IT IS IMPRESSIBLE TO IMPOSE SENTENCE OF RIGOROUS IMPRISONMENT ON A DEFAULTER UNDER S. 125(3)*

107. POINT INVOLVED

S.125(3) – Maintenance – Sentence imposition – Default in payment of maintenance – It is impermissible to impose a sentence of rigorous imprisonment on a defaulter – Sentence of simple imprisonment atone can be imposed u/S.125(3).

Parties – ***Moideenkutty Kunhankutty Haji v. State of Kerala***

Reported in – 2008 CRI. L. J. 3402 (KERALA)

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J. *HUSBAND OFFERING TO MAINTAIN HIS WIFE ON CONDITION OF HER LIVING WITH HIM – DUTY OF THE COURT*

108. POINT INVOLVED

S.125 (3), Proviso – Maintenance – Warrant – Maintenance to wife – Husband objecting to order of maintenance and offering to maintain

his wife on condition of her living with him – It is duty of Magistrate to first decide objection filed by husband – Issuance of recovery warrant against husband without deciding his objection under S. 125(3) – Improper.

Parties – ***Dilshad Haji Risal v. State of U.P.***

Reported in – 2006 CRI. L. J. 228 (ALL.)

•

K. *SCOPE AND POWERS OF COURT WHILE EXECUTING ORDER U/S 125 CR.P.C.*

109. POINT INVOLVED

S.125(3) – Maintenance – Scope – Order granting maintenance to wife – Execution of – Recording of finding by Executing Court that petitioner wife stood divorced by her husband – Is not permissible.

Parties – ***Shaik Mahaboob Bee v. State of A.P.***

Reported in – 2003 CRI. L. J. 2199 (A.P.)

•

L. RECOVERY OF INTERIM MAINTENANCE – PROCEDURE THEREFOR

110. POINT INVOLVED

S.125, S.126(2) – Maintenance – Interim – maintenance – Grant of – Magistrate passing order attaching salary without even serving notice copy of petition on husband/his counsel – Order liable to be set aside – However on plea of necessity of maintenance for sustenance of life and to

save applicant wife from beggary, interim maintenance awarded.

Parties – ***Nabin Chandra v. Hemant Kumari***

Reported in – 1996 CRI. L. J. 2782 (ORISSA)

•

M. *RECOVERY OF MAINTENANCE CAN BE EFFECTED AGAINST SALARY OF DEFAULTING FATHER/ HUSBAND*

111. POINT INVOLVED

S.125 – Maintenance – Recovery of – Can be effected against salary of a defaulting father or husband – Attachment of salary for recovery of arrears of maintenance– Permissible.

Parties – ***Bhagwat Gaikwad v. Baburao Gaikwad***

Reported in – 1994 CRI. L. J. 2393 (BOMBAY)

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N. *FAMILY PENSION*

112. POINT INVOLVED

S.125(5) – Family pension – No charge can be levied on family pension on account of an order of grant of maintenance to the legitimate children of the deceased Government servant through a legally

divorced wife – It could be inherited by her legal heirs but not by those who are differently related to the deceased Government servant.

Parties – ***Mamta Sharma (Smt.) v. State of M.P. & ors.***

Reported in – ILR (2015) MP 1441

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O. *COMPROMISE IS NO GROUND TO DENY EXECUTION OF MAINTENANCE ORDER*

113. POINT INVOLVED

S.125(5) – Maintenance – Order granting maintenance – Cancellation of – Unless order granting maintenance was cancelled under S. 125 (5) its validity survives – Compromise between parties subsequent to passing of order and they living together for some period – No ground to deny execution of order.

Parties – *S. Rajendran v. Revathy*

Reported in – 1994 CRI. L. J. 3017 (MADRAS)

•

P. COURT CANNOT PASS ORDER OF ARREST WITHOUT RESORTING TO MEASURES U/S 421 CR.P.C.

114. POINT INVOLVED

S.125(3) and S.421 – Maintenance – Execution proceedings for recovery of maintenance allowance – Court cannot pass order of arrest without resorting to coercive measures provided under S. 421 like attachment of property etc.

Parties – *Om Parkash v. Vidhya Devi*

Reported in – 1992 CRI. L. J. 658 (PUNJ. & HAR.)

•

Q. HUSBAND PROVING THAT HE HAS NO MEANS TO PAY – IMPRISONMENT WOULD BE UNWARRANTED

115. POINT INVOLVED

S.8, S.125(3) – Maintenance – Order for maintenance – Enforcement – Sufficient cause for not complying with order – Husband proving that he has no means to pay – Imprisonment would be unwarranted.

Parties – *Dnyaneshwar Baburao Gorel v. Kamal Dnyaneshwar Gorel*

Reported in – 1992 CRI. L. J. 835 (BOMBAY)

•

R. *POWERS OF EXECUTING COURT – CANNOT CANCEL ORDER OF MAINTENANCE*

116. POINT INVOLVED

S.125 – Maintenance – Execution of order of maintenance – Power of Magistrate – He cannot cancel order of maintenance.

Parties – *Jangam Srinivasa Rao v. Jangam Rajeswari*

Reported in – 1990 CRI. L. J. 2506 (A.P.)

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S. *WIFE CAN RECOVER ARREARS FOR THREE YEARS BY RESORTING TO CIVIL SUIT*

117. POINT INVOLVED

S.125, Proviso – Maintenance – Applies to both modes of recoveries – No application for execution can be entertained for period exceeding twelve months – However wife is entitled to recover arrears for three years by resorting to civil suit.

Parties – *Jangam Srinivasa Rao v. Jangam Rajeswari*

Reported in – 1990 CRI. L. J. 2506 (A.P.)

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T. *MAINTENANCE ORDER PASSED IN TERMS OF COMPROMISE IS EXECUTABLE U/S 125(3)*

118. POINT INVOLVED

S.125(3) – Maintenance – Application by wife for maintenance – Compromise – Order passed in terms of compromise – Breach of order by husband – Order is executable under S.125(3).

Parties – ***Sailesh Padhan v. Harabati Padhan***

Reported in – 1989 CRI. L. J. 1661 (ORISSA)

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U. RECOVERY OF MAINTENANCE – SALARY OF HUSBAND CAN BE ATTACHED

119. POINT INVOLVED

S.125(3) – Maintenance – Movable property includes salary – Salary of husband can be attached for payment of maintenance to wife.

Parties – ***In Re : Yerasuri Lakshminarayana Murthy***

Reported in – 1986 CRI. L. J. 1846 (A.P.)

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XV. LIMITATION

A. COMPUTATION OF LIMITATION FOR FILING EXECUTION APPLICATION

120. POINT INVOLVED

S.125 of CrPC – S.15 of Limitation Act – Maintenance – Limitation – Grant of – Limitation for filing execution application– Computation– Period during which stay order was operating will be excluded.

Parties – ***Amrendra Kumar Paul v. Maya Paul***

Reported in – 2010 CRI. L. J. 395 (SC)

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B. SUBSEQUENT APPLICATION FOR EXECUTION – LIMITATION THEREFOR

121. POINT INVOLVED

S.125(3) – Maintenance – Limitation – Warrant– Failure to pay Maintenance – Application for issuance of warrant – Limitation – Application for issuance of

warrant filed within stipulated period of one year – Subsequent application filed in same proceedings claiming arrears for subsequent period– Is not fresh application– Not barred by limitation.

Parties – ***Shantha v. B. G. Shivananjappa***

Reported in – 2005 CRI. L. J. 2615 (SC)

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C. *APPLICATION FOR RECOVERY OF PASSED ARREARS OF MAINTENANCE*

122. POINT INVOLVED

S.125(3) – Maintenance – Recovery proceedings – Application for recovery of past arrears of Maintenance – Period of limitation specified in first proviso to S. 125 (3) would start from date on which it became due – Recovery could be ordered of amount falling due during pendency of said application.

Parties – ***Nanhi Bai v. Netram***

Reported in – 2001 CRI. L. J. 4325 (M.P.)

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D. *LIMITATION OF EXECUTION STARTS FROM DATE OF ORDER*

123. POINT INVOLVED

S.125(3) – Maintenance – Limitation – Maintenance – Execution of order – Limitation – Maintenance granted from date of application – Becomes due on date of

passing of order – Limitation for execution starts from date of order.

Parties – ***Takkalapally Laxmamma v. Takkalapally Rangaiah***

Reported in – 1992 CRI. L. J. 266 (A.P.)

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124. POINT INVOLVED

S. 125 of CrPC – Expiration of the period of *iddat* – Wife's right to maintenance does not cease to operate and she is entitled to claim maintenance. The petition for monthly maintenance by the divorced wife after divorce till her remarriage against her husband and the petition for monthly maintenance for minor children against their father is maintainable.

Parties – ***Asif Saied v. Smt. S.M. Unnissan Rana & Ors.***

Reported in – I.L.R. (2011) M.P. 2233

Recently, the Hon. Apex Court in the case of ***Shabana Bano v. Imran Khan, AIR 2010 SC 305*** has resolved the controversy raised in this case in the following manner :-

> "The appellant's petition under Section 125 of the Cr.P.C. would be maintainable before the family Court as long as appellant does not remarry. The amount of maintenance to be awarded under Section 125 of the Cr.P.C. cannot be restricted for the iddat period only. Cumulative reading of the relevant portions of judgments of this Court in ***Danial Latifi, 2001 AIR SCW 3932*** (Supra) and

> ***Iqbal Bano, 2007 AIR SCW 3880*** (supra) would make it crystal clear that even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband, as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women. It is held that even if a Muslim woman has been divorced, she would be entitled to claim maintenance from her husband under Section 125 of the Cr.P.C. after the expiry of period of iddat, also, as long as she does not remarry."

Further, a Constitution Bench of this Court in the case of ***Danilal Latif and Anr. v. Union of India, (2001) 7 SCC 746*** observed as follows:

> "A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood after the divorce and, therefore, the word "provision" indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles. The expression "within" should be read as "during" or "for" and this cannot be done because words cannot be construed contrary to their meaning as the word "within" would mean "on or before", "not beyond" and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time."

In the case of ***Hazi Farzand Ali v. Neerjahan, 1988 Cri.L.J. 142*** the High Court of Rajasthan held in this manner:-

> "Having read the petition, I am of the opinion that the amount of I maintenance has been claimed by the non-petitioner for herself as well as for her three minor children. This is a joint application moved by her on her behalf and on behalf of her children and a prayer has been made for the award of maintenance to the tune of Rs. 500/- for her minor children and herself. Thus, the application can be treated as an application for maintenance by each of her minor children u/s 125, Cr.P.C."

In the light of the decisions extracted above, in the opinion of this court, on the expiration of the period of iddat the wife's right to

maintenance does not cease to operate and she is entitled to claim maintenance under any circumstances. Hence, the petition for monthly maintenance by the divorced wife after divorce till her remarriage against her husband and the petition for monthly maintenance for minor children against their father is maintainable. So far as the quantum of maintenance amount is concerned, the standard of life enjoyed by her during her marriage and in the present scenario of the sky rocketing prices, the basic need of the grownup children and the

liabilities of the respondent-wife, all these factors should be kept in mind at the time of determining the amount of monthly maintenance. Looking to the evidence adduced before the trial Magistrate, it appears that the petitioner/husband is working as teacher in Madarsa and getting regular income with annual increments on salary and there is further provision of timely revision of pay scales by the State under the relevant rules. Hence, there appears to be no illegality committed by the Revisional court in passing the impugned Award.

For these reasons, the revision petition is dismissed confirming the order passed by the Revisional court. It is needless to add that it would be open to the parties to make an application under Section 127(1) of the Cr.P.C. on proof of a change in the circumstances as envisaged by that Section.

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E. *APPLICATION MUST BE FILED WITHIN A REASONABLE PERIOD*

125. POINT INVOLVED

S.125(3) – Filing of application for maintenance, limitations therefor – Although no limitation is fixed for filing of maintenance application, yet it must be filed within a reasonable period.

Parties – ***Shashikala Bai (Smt.) v. Mahendra Singh***

Reported in – 2014 (IV) MPJR 164

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XVI. MISCELLANEOUS

126. POINT INVOLVED

S.125 – Maintenance – Maintenance – Application by widowed daughter–in–law and grand children – Parents–in–law cannot be directed to pay maintenance to them.

Parties – ***Ved Parkash v. Leena Kahar***

Reported in – 1996 CRI. L. J. 2703 (PUN & HAR)

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127. POINT INVOLVED

S.125(3) and S.421 – Maintenance – Execution proceedings for recovery of maintenance allowance – Court cannot pass order of arrest without resorting to coercive measures provided under S. 421 like attachment of property etc.

Parties – *Om Parkash v. Vidhya Devi*

Reported in – 1992 CRI. L. J. 658 (PUN & HAR)

•

128. POINT INVOLVED

S.125 – Maintenance proceedings – Are in reality of civil nature.

The proceedings under S. 125 of the Code of Criminal Procedure are in the nature of civil proceedings. Though they are wholly governed by the procedure of the Code of Criminal Procedure, they are really of civil nature, but are dealt with summarily in a Criminal Court for the purpose of speedy disposal on grounds of convenience and social order.

Parties – *Pandharinath Sakharam Thube v. Surekha Pandharinath Thube*

Reported in – 1999 CRI. L. J. 2919 (BOMBAY)

•

129. POINT INVOLVED

Section 125 of Criminal Procedure Code, 1973 and section 45 of the Evidence Act, 1872 – Medical examination – Applicant took a defence that wife is having character of hermaphroditism (Ubhaylingata) and prayed for her karyotype medical test –

Held, person can not be insisted contrary to her wish to examine herself for any medical examination – Such direction would be violative of Article 21 of Constitution – Revision dismissed.

Parties – ***Pushpendra Singh Thakur v. Smt. Mamta Thakur***

Reported in – ILR (2012) M.P. 292

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130. POINT INVOLVED

Section 125 & 127 of Criminal Procedure Code, 1973 Payment of maintenance amount – Petitioner was directed to pay interim maintenance – Application for alteration of interim maintenance amount on the ground of delaying tactics being adopted by wife, filed by husband is pending – Held, unless the interim order of maintenance passed earlier is amended/altered or maintained, same will be enforceable – Petitioner bound to pay interim maintenance amount – Revision dismissed with direction to dispose of the petition within two months from the date of order.

Parties – ***Ajay Sharma v. Smt. Archana Sharma***

Reported in – ILR (2012) M.P. 272

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131. POINT INVOLVED

Section 125 of Criminal Procedure Code, 1973 Maintenance – Decree of divorce passed against wife on the ground that she is living an adulterous life – Wife is not entitled for maintenance allowance.

Parties – ***Raj Kumar Dubey @ Raju v. Smt. Rekha Dubey @ Gothal Bai***

Reported in – ILR (2012) M.P. 794

In the instant case, the respondent/ wife is a divorcee and the decree of divorce is passed on the ground that she is living an adulterous life. However, the aforesaid decree was passed ex-parte, but the respondent's application under Order 9 Rule 13 of CPC is also dismissed vide order dated 31.07.2007 in M.J.C. 03/04, hence the aforesaid decree has become final.

Hon'ble Apex Court in the case of ***Rohtash Singh v. Smt. Ramendri and others, AIR 2000 SC 952*** in para 6 has held as under:

> "(6) Under Section 125(4) Cr.P.C. a wife is not entitled to any Maintenance Allowance from her husband if she is living in adultery or if she has refused to live with her husband without any sufficient reason or if they are living separately by mutual consent. Thus, all the circumstances contemplated by sub-section (4) of section 125 Cr.P.C. presuppose the existence of matrimonial relations. The provision would be applicable where the marriage between the parties subsists and not where it has come to an end. Taking the three circumstances individually, it will be noticed that the first circumstances on account of which a wife is not entitled to claim Maintenance Allowance from her husband is that she is living in adultery. Now, adultery is the sexual intercourse of two persons, either of whom is married to a third person. This clearly supposes the subsistence of marriage between the husband and wife and if during the subsistence of marriage, the wife lives in adultery, she cannot claim Maintenance Allowance under Section 125 of the Code of Criminal Procedure."

In the case in hand, the responden's marriage life between the parties do not subsist. The decree of divorce is granted on the ground that wife is living in adultery therefore, in view of Section 125(4), she is not entitled for maintenance allowance.

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132. POINT INVOLVED

Section 125 of Criminal Procedure Code, 1973 and Section 18 (2) of Hindu Adoptions And Maintenance Act, 1956 – Proceeding under section 125 Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and an order passed under section 125 Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife u/s 18 (2) of Hindu Adoption and Maintenance Act.

Parties – ***Nagendrappa Natikar v. Neelamma***

Reported in – AIR 2013 SC 1541

The question that is raised for consideration in this case is whether a compromise entered into by husband and wife under Order XXIII, Rule 3 of the Code of Civil Procedure, agreeing for consolidated amount for permanent alimony, thereby giving up any future claim for maintenance, accepted by the Court in a proceeding under Section 125 of the Code of Criminal Procedure would preclude the wife from claiming maintenance in a suit filed under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (for short "the Act")?.

Section 125 Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the

status and personal rights of parties, which is in the nature of civil proceeding, though are governed by the provisions of the Cr.P.C and the order made under Section 125 Cr.P.C. is tentative and is subject to final determination of the rights in a civil court.

Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a Court of Law and such an agreement is void, since the object is unlawful. Proceeding under Section 125 Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125 Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under section 18(2) of the 1956 Act.

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133. POINT INVOLVED

Section 125 (3) and first proviso thereto of Criminal Procedure Code, 1973 – Construction of the proviso to Section 125 (3) Cr.P.C. – It does not create a bar or in any way affect the entitlement of a claimant to arrears of maintenance – Only procedure of recovery of maintenance in the manner provided for levying fines and the detention of the defaulter in custody would not be available – However, in such situation the ordinary remedy to recover the amount of maintenance, namely, a civil action would still be available.

Parties – ***Poongodi and another v. Thangavel***

Reported in – (2013) 10 SCC 618

A reading of the order dated 21-4-2004 (***Thangavel v. Poongoli, Cr. Rev. No. 620 of 2003 (Mad)***) passed by the High Court would go to show that the proviso to Section 125(3) CrPC has been construed by the High Court to be a fetter on the entitlement of the

claimants to receive arrears of maintenance beyond a period of one year preceding the date of filing of the application under Section 125(3) CrPC. Having considered the said provision of the Code we

do not find that the same creates a bar or in any way affects the entitlement of a claimant to arrears of maintenance. What the proviso contemplates is that the procedure for recovery of maintenance under Section 125(3) CrPC, namely, by construing the same to be a levy of a fine and the detention of the defaulter in custody would not be available to a claimant who had slept over his/her rights and has not approached the court within a period of one year commencing from the date on which the entitlement to receive maintenance has accrued. However, in such a situation the ordinary remedy to recover the amount of maintenance, namely, a civil action would still be available.

The decision of this Court in ***Kuldip Kaur v. Surinder Singh, (1989)1 SCC 405 : AIR 1989 SC 232*** may be usefully recalled wherein this Court has held the provision of sentencing under Section 125 (3) to be a "mode of enforcement" as distinguished from the "mode of satisfaction" of the liability which can only be by means of actual payment. Paragraph 6 of the report to the above effect, namely, that the mode of enforcement i.e. sentencing to custody does not extinguish the liability may be extracted below:

> "6. 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 realised 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. 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. That is the reason why we set aside the order under appeal and passed an order in the following terms……”

In another decision of this Court in ***Shantha v. B.G. Shivananjappa, (2005) 4 SCC 468 :AIR 2005 SC 2410*** it has been held that the liability to pay maintenance under Section 125 CrPC is in the nature of a continuing liability. The nature of the right to receive maintenance and the concomitant liability to pay was also

noticed in a decision of this Court in ***Shahada Khatoon v. Amjad Ali, (1999)5 SCC 672:1999 AIR SCW 4880.*** Though in a slightly different context, the remedy to approach the court by means of

successive applications under Section 125(3) CrPC highlighting the subsequent defaults in payment of maintenance was acknowledged by this Court in ***Shahada Khatoon*** (supra).

The ratio of the decisions in the aforesaid cases squarely applies to the present case. The application dated 5.2.2002 filed by the appellants under Section 125(3) was in continuation of the earlier applications and for subsequent periods of default on the part of the Respondent. The first proviso to Section 125(3), therefore did not extinguish or limit the entitlement of the appellants to the maintenance granted by the learned trial court, as has been held by the High Court.

In view of the above, we are left in no doubt that the order passed by the High Court needs to be interfered with by us which we accordingly do. The order dated 21.4.2004 of the High Court is set aside and we now issue directions to the respondent to pay the entire arrears of maintenance due to the appellants commencing from the date of filing of the Maintenance Petition (M.C.No.1 of1993) i.e. 4.2.1993 within a period of six months and current maintenance commencing from the month of September 2013 payable on or before 7.10.2013 and thereafter continue to pay the monthly maintenance on or before the 7th of each successive month. If the above order of this Court is not complied with by the respondent, the learned trial court is directed to issue a warrant for the arrest of the respondent and ensure that the same is executed and the respondent taken into custody to suffer imprisonment as provided by Section 125(3) CrPC.

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134. POINT INVOLVED

Section 125 of Criminal Procedure Code, 1973

- Claim of maintenance by second wife is maintainable if the second marriage has been performed as per the Hindu rites but during the subsistence of first marriage, if the husband had not disclosed the fact of earlier marriage to the second wife, the husband cannot be permitted to take the advantage of his own wrong – The said person could be treated as legally wedded wife.
- The situation would be different if the second marriage was within the full knowledge of the first marriage.

Parties – *Badshah v. Urmila Badshah Godse and another*

Reported in – (2014) 1 SCC 188

We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter.

Firstly, in ***Chanmuniya v. Virendra Kumar Singh Kushwah, (2011) 1 SCC 141,*** the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125,Cr.P.C. by interpreting the term "wife" widely. The Court has impressed that if man and woman have been living together for a long time

even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125,Cr.P.C. On the other hand, in the present case, respondent No.1 has been able to

prove, by cogent and strong evidence, that the petitioner and respondent No.1 had been married each other.

Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the respondent No.1 in dark about her first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into martial tie with respondent No.1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under Section 125,Cr.P.C. as respondent No.1 is not "legally wedded wife" of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 Cr.P.C., respondent No.1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in ***Yamunabhai Anantrao Adhav v. Anantrao Shivram Adhav, (1998) 1 SCC 530*** and ***Savitaben Somabhai Bhatiya v. State of Gujarat, (2005) 3 SCC 636*** would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries a second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125, Cr.P.C. While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of

the society. The purpose is to achieve "social justice" which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society.

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135. POINT INVOLVED

Section 125 of Criminal Procedure Code, 1973 and Sections 3 and 5 of Muslim Women (Protection of Rights on Divorce) Act, 1986

- Whether a Muslim divorced woman's application for maintenance u/s 125 Cr.P.C. is to be restricted to the date of divorce and as an ancillary to it? Held, No.
- Whether filing of an application under section 3 of the Act of 1986 for mahr and return of gifts after divorce, would disentitle her to sustain the application under section 125 Cr.P.C.? Held, No.

Parties – ***Shamim Bano v. Asraf Khan***

Reported in – 2014 (2) Crimes 234 (SC)

The aspect which has to be kept uppermost in mind is that when the marriage breaks up, a woman suffers from emotional fractures, fragmentation of sentiments, loss of economic and social

security and, in certain cases, inadequate requisites for survival. A marriage is fundamentally a unique bond between two parties. When it perishes like a mushroom, the dignity of the female fame gets corroded. It is the law's duty to recompense, and the primary obligation is that of the husband. Needless to emphasise, the entitlement and the necessitous provisions have to be made in accordance with the parameters of law.

Under these circumstances, regard being had to the dictum in ***Khatoon Nisa v. State of U.P. and others, 2002 (6) SCALE 165,*** seeking of option would not make any difference. The High Court is not correct in opining that when the appellant-wife filed application under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act 1986, she exercised her option. As the Magistrate still retains the power of granting maintenance under Section 125 of the Code to a divorced Muslim woman and the proceeding was continuing without any objection and the ultimate result would be the same, there was no justification on the part of the High Court to hold that the proceeding after the divorce took place was not maintainable.

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136. POINT INVOLVED

Section 125 of Criminal Procedure Code, 1973 and Section 3 of Muslim Women (Protection of Rights On Divorce) Act, 1986 – Provisions under sections 125 to 128 of the Code, applicability to divorced Muslim women – Law stated – After the commencement of the Muslim Women

(Protection of Rights on Divorce) Act, 1986, applicability of sections 125 to 128 is not excluded – It is the option of the parties

to take recourse under sections 125 to 128 of the Code even after filing an application under section 3 (2) of the Act of 1986 – If the Muslim divorced woman or man, as the case may be, on notice on the first date of hearing opted to take recourse to proceed under sections 125 to 128 of the Code, then the Court cannot restrict them from the said course and cannot direct them to proceed under the Act of 1986.

Parties – ***Qureshia Bi v. Abdul Hameed***

Reported in – 2014 (2) MPLJ 137

It is clear that after commencement of the Muslim Women (Protection of Rights of Divorce) Act, 1986 the applicability of sections 125 to 128 of Criminal Procedure Code is not excluded. It is the option to the parties to take recourse under sections 125 to 128 of Criminal Procedure Code even on filing an application under section 3 (2) of the Act of 1986. Bare reading of section 5 of the Act of 1986, if the Muslim divorced woman or husband, as the case may be, on notice on the first date of hearing opted to take recourse or want to proceed under sections 125 to 128 of Criminal Procedure Code then the Court cannot restrict them from the said recourse, and cannot direct them to take recourse only under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

It is to be noted that the law laid down in the judgment of ***Mohd. Ahmed Khan v. Shah Bano Begum and others, AIR 1985 SC 945*** by the Constitutional

Bench of the Apex Court has been approved while declaring the Act of 1986 as intra vires. In the case of ***Danial Latift and another v. Union of India, (2001) 7 SCC 740***, the Hon'ble Apex Court

concluded that under the Act of 1986 in section 3 (1) (a) words "reasonable and fair provision" and "maintenance" are having two distinct areas and further referring section 4 thereof held that to make a "reasonable and fair Provision" is different than "maintenance" awardable to divorced Muslim wife by a husband. Section 4 further offers a reasonable provision for maintaining a divorced Muslim wife be the family members or by the Wakf Board as the case may be, in the circumstances prevalent so. The ratio of the said two decisions have been reiterated in the case of ***Iqbal Bano v. State of U.P. and another, (2007) 6 SCC 785*** and ***Shabana Bano v. Imran Khan, (2010) 1 SCC 666*** by the Supreme Court as mentioned herein above. Thus, to conclude as per the said precedent and in the light of the codified provisions of the Act of 1986, it is to be held that hike application filed by a divorced Muslim woman under section 3 (2) of the Act would not debar her to take recourse of sections 125 to 128 of Criminal Procedure Code which is a secular provision irrespective to religion or caste. In case the application has been filed by a divorced Muslim woman under section 3 (2) of the Act and on issuance of the notice to the husband, on such application on the first date of hearing, as per declaration or affidavit in writing it be decided accordingly, by the Magistrate. This confers that on submitting an application, the magistrate shall proceed according to the option of either party. The transitional provision made in section 7 do not affect the provision of section 5 of the Act because the transitional provision is only to deal the contingency regarding pendency of the application under section 125 of Criminal Procedure Code on the date of commencement of the Act subject to section 5 of the Act of 1936.

In view of forgoing discussion and looking to the facts of the present case, it is apparent that the applicant has filed an

application under section 127 of Criminal Procedure Code seeking alteration of the allowance awarded to her by the trial Court about

two decades before on an application under section 125 of Criminal Procedure Code. It is not brought on record that after service of notice, husband has submitted any option or declaration to opt for provisions of the Act of 1986. In such circumstances, the wife herself opted to proceed as per sections 125 to 128 of Criminal Procedure Code, however, the Court cannot direct that such application is not maintainable in view of commencement of the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

In view of analytical detailed discussions made hereinabove referring various provisions of the Act of 1986, which are considered in various judgments of the Hon'ble Apex Court, including the two Constitutional Bench judgments, referred herein above, this Court is bound by the ratio laid down in the said judgments of the Apex Court. As per Article 141 of the Constitution of India law declared by the Supreme Court is binding on all Courts. It includes the High Courts and subordinate Courts. However, the judgments of this Court in the cases of ***Abdul Rashid (Dr.) v. Mst. Farida, 1994 MPLJ 583, Julekha Bi v. Mohammad Fazal, 1999 (2) MPLJ 64*** and ***Munni alias Mubarik v. Shahbaz Khan, 2002 (2) MPLJ 340*** are hereby ignored. However, the findings and the order passed by the trial Court and revisional Court relying upon the judgments of this Court holding that the application under section 127 filed by the applicant is not maintainable, are hereby set aside.

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137. POINT INVOLVED

Section 125 – Maintenance – Husband, liability of – If the husband is healthy and

able-bodied person, he cannot escape from his liability to pay maintenance to his wife and children – He is bound to earn and pay.

Parties – ***Shila Bai (Smt.) and anr. v. Ashok Kumar Patel***

Reported in – ILR (2014) MP 832

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138. POINT INVOLVED

Section 125 – Proceedings under section 125 CrPC – Inquiry, scope of – Proceedings being summary in nature, it is not necessary on the part of the Court to ascertain as to who was in wrong and the minute details of the matrimonial dispute need not be gone into.

Parties – ***Sunita Kachwaha and others v. Anil Kachwaha***

Reported in – 2014 (3) JLJ 404

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