



ENSURING EQUITY BETWEEN PARTIES :MAINTENANCE AND MATRIMONIAL PROPERTY

**Presented by:
Justice Anubha Rawat Choudhary,
Judge, High Court of Jharkhand**

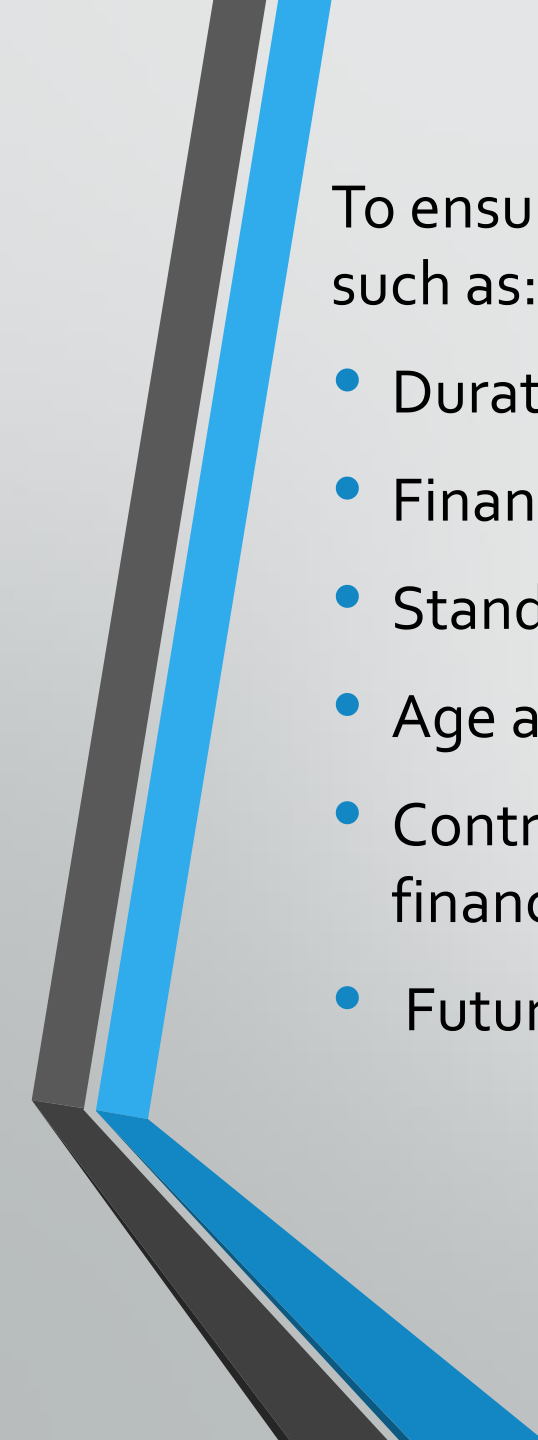
Introduction

Ensuring equity between parties in maintenance and division of matrimonial property is crucial for a fair and just outcome in divorces or legal separations.

Maintenance, also known as alimony or spousal support, refers to the financial support provided by one spouse to the other after separation or divorce. The purpose of maintenance is to address any economic disparities between the parties, especially when one spouse earns significantly less or has been financially dependent on the other during the marriage.

I. The concept of 'maintenance' under Indian law

- The dictionary meaning of the term maintenance is support or sustenance. The concept of maintenance flows from the concept of the marriage and the duty of the husband after marriage to maintain his wife and minor children and also to maintain his old parents throughout their life.
- The term maintenance is not defined in the marriage laws of any of the religious communities. But the entitlement of claiming maintenance is certainly based on the assumption that the claimant doesn't have the sufficient means to support herself.
- The maintenance generally covers the expenses for necessities or essentials for the substance of life. However, it is not merely a right for survival of the claimant.



To ensure equity in maintenance, various factors are taken into consideration, such as:

- Duration of the marriage or relationship
- Financial needs and earning capacities of both parties
- Standard of living enjoyed during the marriage
- Age and health of each spouse
- Contributions made by each spouse to the family, both financially and non-financially
- Future prospects and employability of the receiving spouse

Laws for granting Maintenance

The laws under which Maintenance in India can be granted are :

- Section 125 Criminal Procedure Code(Cr.P.C.)
- Section 20 of Protection of women from Domestic Violence
- Section 18 of Hindu Adoption and Maintenance Act
- Section 24 of Hindu Marriage Act
- Section 25 of Hindu Marriage Act
- Personal Laws

Guidelines on Maintenance in Matrimonial Cases by Apex Court

The Hon'ble Supreme Court of India in the case of [*Rajnish vs Neha and Anr., 2021 \(2\) SCC 32*](#) laid down the set of guidelines relating to maintenance in cases of matrimonial disputes.

The Hon'ble Supreme Court in this case decided to frame the following guidelines pertaining to the issues mentioned:

1. Issue of overlapping jurisdiction

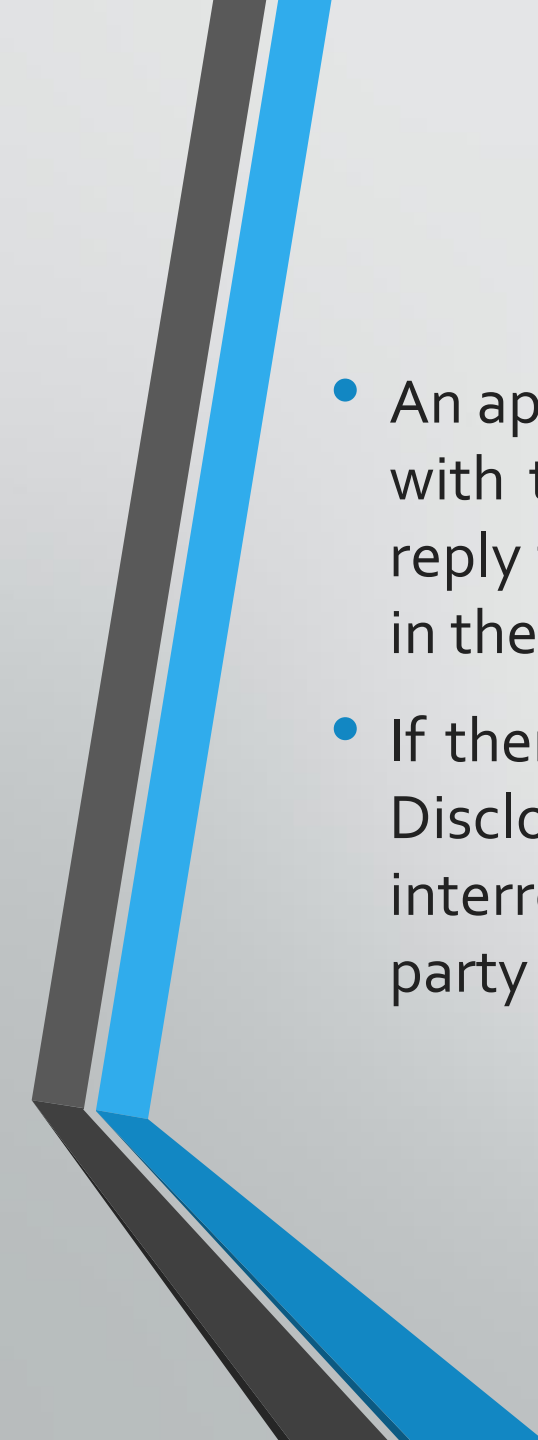
The following are the directions issued by the Court:

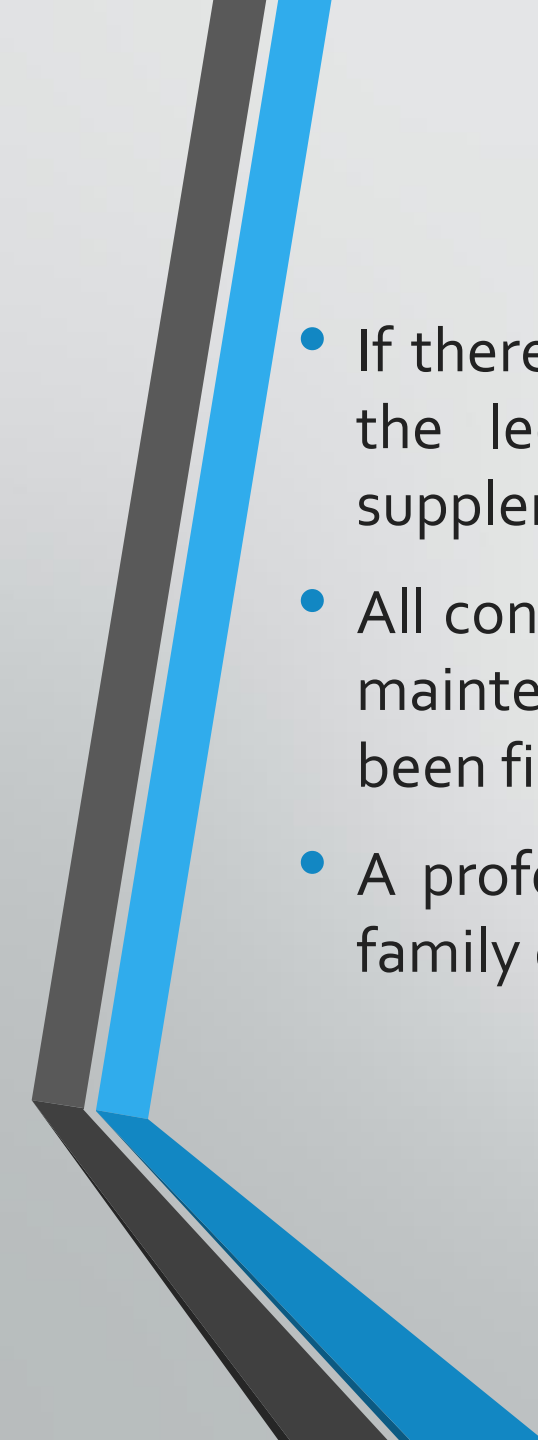
- If maintenance has been awarded to the wife in a previous legal proceeding then she is under a legal obligation to disclose about it in a subsequent proceeding for maintenance, which is/may have been filed under another statute or law.
- Whilst determining the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previous legal proceeding and then go on to decide the maintenance payable to the claimant.

2. Payment of Interim Maintenance

The following were the directions passed by the Court:

- Parties must make an endeavor to resolve the dispute amicably.
- The party that claims maintenance as a spouse or as a partner, live-in relationship, common law marriage, will have to file an application for interim maintenance with limited pleadings with a mandatory requirement of submission of an Affidavit of Disclosure of Assets and Liabilities before the concerned court of law so that the court can make an objective assessment of the legitimate amount that needs to be awarded towards maintenance to the applicant, with her child (if any) at the interim stage.

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- An applicant who is claiming maintenance must file a concise application along with the affidavit of disclosure of assets and the respondent must submit a reply to it within a period of 4 weeks. A format of the same has been enclosed in the judgement itself.
 - If there is any dispute with respect to contents mentioned in the Affidavit of Disclosure, the aggrieved party may seek the permission of the Court to serve interrogatories and seek production of relevant documents from the opposite party under [Order XI](#) of the [Code of Civil Procedure, 1908](#).

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- If there is any change in the financial status of either party during the course of the legal proceedings or change in circumstances or new facts then a supplementary affidavit must be filed which must be considered by the court.
 - All concerned courts must make endeavour to decide on interim applications for maintenance within a period of 4 to 6 months after an affidavit of disclosures has been filed.
 - A professional marriage counselor must be ready and available in all family courts for the parties in dispute.

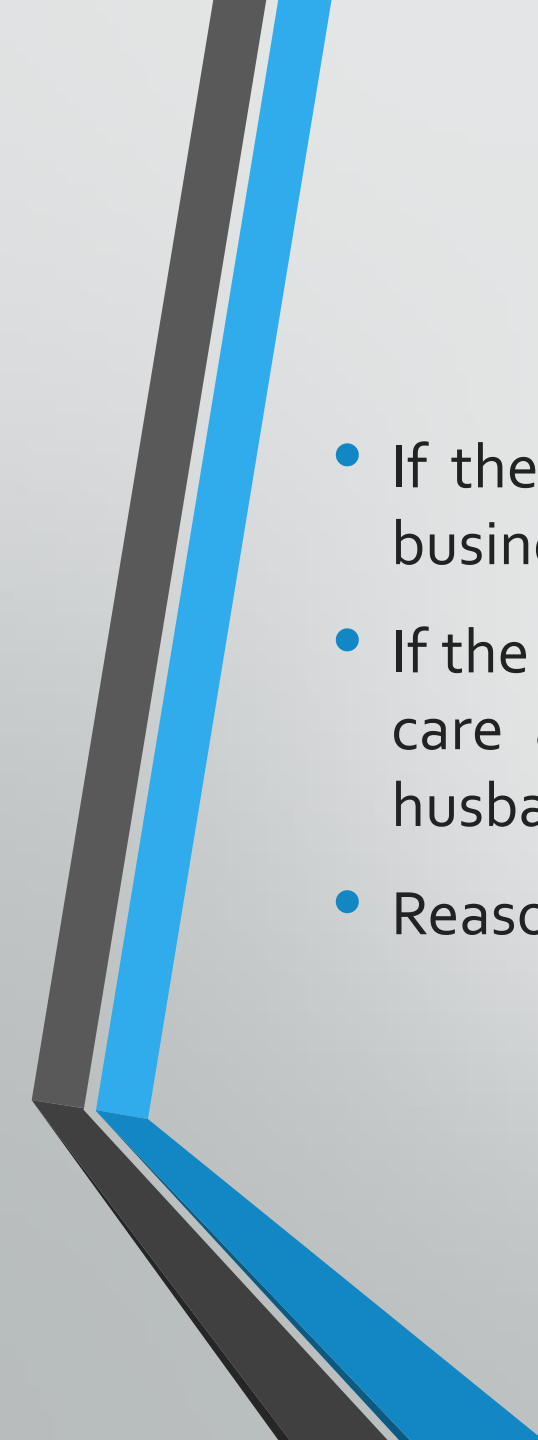
In case of permanent alimony:

- Oral and documentary evidence about one's income, expenditure, standard of living, etc. before the concerned Court can be submitted by parties to fix the permanent alimony payable to the spouse.
- The duration of the marriage must be factored in to determine the permanent alimony to be paid.
- If custody is with the wife, reasonable expenses for the marriage of children must be granted by the court at the time of determining permanent alimony.
- Any trust/ fund in the name of a child would be taken into account when determining child support.

3. Criteria for Determining the Quantum of Maintenance

The Apex Court stated the following criteria to be considered while determining the quantum of maintenance payable to an applicant:

- The needs of the wife and her child amounted in reasonable capacity;
- The level of education received by the applicant and how professionally qualified the applicant is;
- If there is any subsisting/ current individual source of income of the applicant;
- If the aforementioned income is enough for her to live the same standard of life as she was previously living in her matrimonial house;

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- If the applicant already had some kind of employment or was engaged in a business at the time of her marriage;
 - If the wife had to sacrifice and leave her employment/ job opportunities to take care and build her family, child and look after the adult members of the husband's family;
 - Reasonable costs of litigation must be considered if the wife is non-working.


Additional factors deemed to be relevant by the Court in determining the quantum of maintenance

- Age and employment of parties;
- Right to residence;
- If the wife is having a source of income;
- Maintenance for food, clothing, education, residence, and medical expenses of the minor child and a reasonable amount for extra-curricular classes;
- Serious illness or disability of a spouse, child.

4. Date from which maintenance must be awarded

The Apex Court stated that there is no law in force under the HMA with respect to the date from which an order of maintenance may be made effective. Similarly, [Section 12](#) of the DV Act too is silent on the date from which the maintenance is to be awarded.

- However, Section 125 of CrPC states that a Magistrate may award maintenance either from the date of the order or from the date of application.
- There different and divergent views were adopted by different courts on this issue.



In the absence of a uniform law in force to tackle this issue, the Supreme Court, with a stern view to put this to rest, stated that

"in all cases, maintenance must be awarded from the date on which an application was made to the concerned court".

Same principle was relied in case of **Rinki Kumari @ Anita Kumari Vs. Kundan Kumar @ Kundan Kumar Singh, Cr.Rev. No. 577 of 2019, High Court of Jharkhand.**

5. Enforcement of orders of maintenance

The following directions were passed in this regard:

- As provided under Section [51](#), [55](#), [58](#), [60](#) read with [Order XXI](#), of cpc an order or decree of maintenance may be enforced like a decree of a civil court through the provisions which are available for enforcing a money decree, including civil detention, attachment of property.
- In cases of the last resort, the court can strike off the defence of the respondent if the default is found to be wilful and contumacious to an unemployed wife who is taking care of a minor child.
- Additionally, contempt proceedings too can be initiated against the respondent.
- The provision under CPC dealing with arrest and detention for executing a decree are substantive from Sec. 51 to Sec. 59, read with procedural provisions Order 21 Rule 30 to Order 21 Rule 40.

Non-adherence of the guidelines

Hon'ble Apex Court has shown its concerned with regard to non-adherence of the above guidelines, in case of **Aditi alias Mithi Vs. Jitesh Sharma** [Criminal Appeal No (S). 3446 of 2023 arising out of S.L.P. (Crl.) No. 11954 of 2023].

Hon'ble Apex court has observed that the detailed guidelines issued by it in RAJNESH VS NEHA (2021)2 scc32 regarding the payment of maintenance in matrimonial matters is not being followed in many cases. Hence issued a fresh direction as :

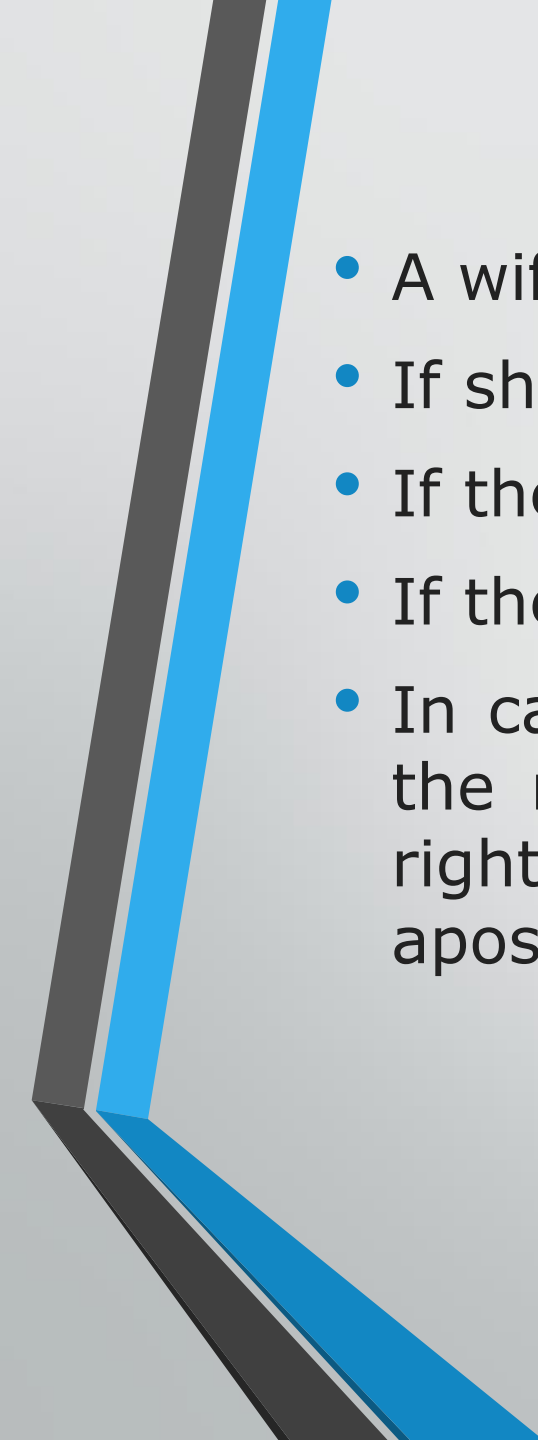
"Considering the facts of the case in hand and the other similar cases coming across before this Court not adhering to the guidelines given in Rajnesh's case (supra), we deem it appropriate to direct the Secretary General of this Court to re-circulate the aforesaid judgment not only to all the Judicial Officers through the High Courts concerned but also to the National Judicial Academy and the State Judicial Academies, to be taken note of during the training programs as well."

Rights of Maintenance under Muslim Law

- Muslim Marriages are regarded as a contract between the husband and wife, who accepts it by uttering "Qubool hai" thrice and signing the required documents in the presence of witnesses.
- In Muslim law, maintenance is called *Nafaqah*. The provision of giving maintenance to a wife is to provide support to women.
- In Islam, the rights and obligations in a marriage are equal in nature for both husband and wife. If the husband fails to provide maintenance to the wife, she can legally refuse to cohabit with the husband. Likewise, if the wife fails to live with the husband, he is then not bound to support her. *Nafaqah* or maintenance includes "all those things which are necessary to the support of life, such as food, clothes and lodging."

Maintenance to Wife

- Under Muslim law, the right of the wife to receive maintenance is an absolute right.
- In a valid marriage, a husband is bound to maintain his wife, i.e., to provide food, shelter, and clothing. However, such is not the case in the case of void or irregular marriage.
- As mentioned earlier, the rights and obligations in a Muslim marriage are bilateral in nature. If a wife is unfaithful or refuses to obey her husband, then the husband is free from the obligation to maintain his wife.

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- A wife is entitled to maintenance even in the following cases:
 - If she is rich or capable of earning or earning.
 - If the husband is impotent or too ill.
 - If the husband has more than one wife.
 - In case a husband is a minor, then he will maintain his wife by the realization of his property. Maintenance is an independent right of the wife, which she loses if she is unchaste or apostasies.

Maintenance in case of Divorce

- Divorce is a situation of dissolution of marriage, wherein, husband and wife are no longer under the contractual obligation to perform their duties towards each other. However, even after the dissolution of marriage, a wife is entitled to maintenance. Under Muslim law, maintenance to wife after divorce can be categorized into three categories:
- Muslim Personal Laws
- Section 125, Criminal Procedure Code, 1973
- The Muslim Women (Protection of Rights on Divorce) Act, 1986

Muslim Personal Law

After the dissolution of marriage, Muslim personal laws suggest that a wife is entitled to maintenance from her husband only for the period of *Iddat*. *Iddat* is the period, a Muslim woman observes after *Talaq* (Divorce). The duration of *Iddat* is three mensuration cycle or if pregnant, then it extends to the whole of pregnancy. A husband is bound to provide maintenance only for the period of *Iddat*, and not beyond that. Once the *Iddat* period is over, then a Muslim woman is entitled to receive maintenance from her those relatives who can inherit her property.

- In Muslim law, there are substances when a wife is not entitled to maintenance after the dissolution of marriage. It includes:
- If the marriage is dissolved because of the wife's defects.
- An apostate wife.
- When the right to maintenance got suspended during marriage for some reasons.
- There are certain circumstances wherein a wife can enter into a valid agreement to obtain separate maintenance. These circumstances could be ill-treatment, dis-agreement the wife not being able to adjust to another wife or any agreement which is opposed to public policy. For example, an agreement to that wife would not be entitled to maintenance after divorce is void.

Section 125, Criminal Procedure Code, 1973

- Section 125 of the Criminal Procedure Code, 1973 provides for the right to maintenance of wife, children, and parents. The act applies to the whole of India, irrespective of religion. According to this section, a wife is entitled to maintenance by her husband in the following conditions:
- If the wife is unable to maintain herself.
- The husband must have sufficient means to pay for the maintenance.
- If the husband has refused to maintain her.
- The wife has not refused to live with her husband except for a reasonable cause.
- The wife not living in adultery.
- The husband and wife not living separately by mutual consent.
- The wife has not remarried after the divorce.

Under this section, only a woman who is not able to maintain herself after divorce is entitled to maintenance. However, Muslim personal law suggests that no matter how much wealth the wife possess, she is entitled to maintenance. This section seems to be in contradiction to the Shariat Act, 1937. In *Ishak Chandra V. Myamatbi & Ors. (1980)*, the issue of whether section 125 is inconsistent with the provisions of the Shariat Act and whether the Shariat Act should prevail over the general provisions of the new code. It was held that the provisions granted under **Section 125 of CrPC are additional rights to divorced Muslim women**. These rights do not conflict with rights that are conferred by the Muslim Personal Laws

Further, in the leading case of ***Mohd. Ahmad Khan V. Shah Bano Begum(1985)***, Justice Y.Y Chandrachud explained the scope of section 125 CrPC. He reiterated the fact that a Muslim woman after divorce falls under the category of “wife” as per the section, and therefore, entitled to maintenance. He added that it would be unjust to hold that a Muslim husband is not under obligation to maintain his former wife, beyond the *iddat* period. As a result, the application of section 125 was extended to Muslim wives as well.

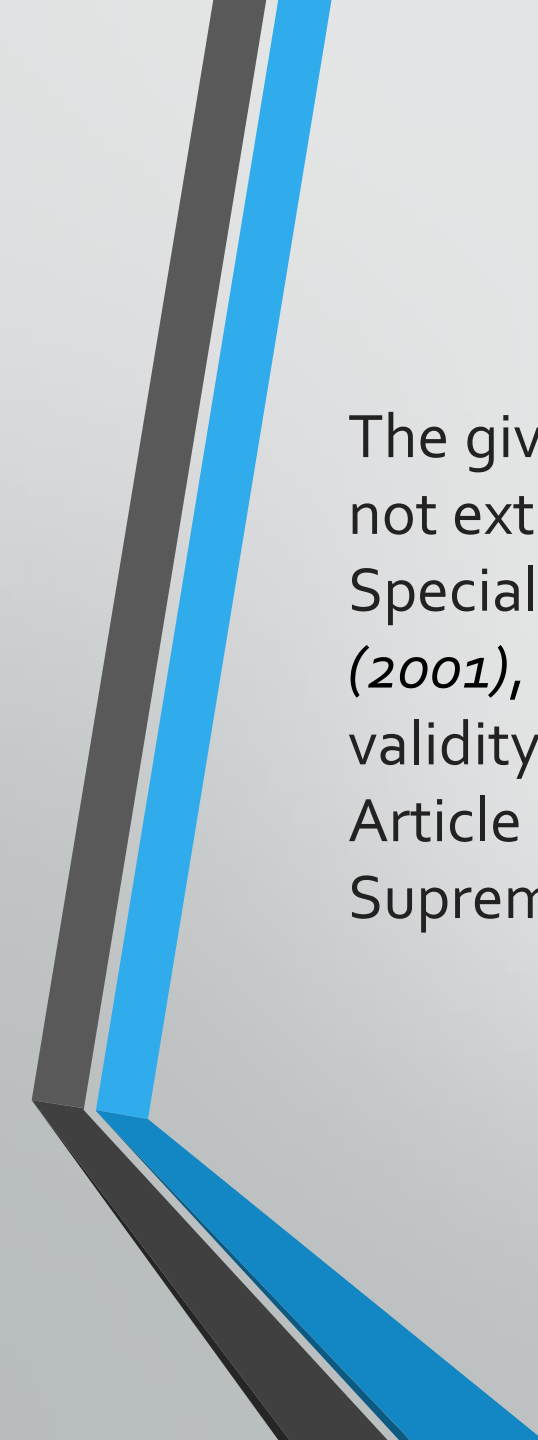
- **Kishori Prasad Mahto Versus The State of Jharkhand (Criminal Revision No.250 of 2014)**

The Hon'ble Jharkhand High Court held under Para 45 as under:

“This Court is of the considered view that the arrears of maintenance could be of 12 months or of any other duration but in case of one warrant issued under Section 125(3) of the Code, there can only be one imprisonment and the maximum imprisonment would be one month.”

The Muslim Women (Protection of Rights on Divorce) Act, 1986

As soon as the significant judgement of the *Shah Bano case* came out, there was a hassle in the Muslim community to undo the effect of section 125 CrPC amongst the Muslim as a Muslim husband is obligated to maintain his former wife for the period of *iddat*. As a result, a bill was introduced in the Parliament to make separate provisions for the protection of Sharia as well as Muslim women. It led to the enforcement of the Muslim Women (Protection of Rights on Divorce) Act, 1986 on 19 May 1986.



The given act only applies to women married according to Muslim law. It does not extend to provide provisions to Muslim women who are married under the Special Marriage Act, 1954. In the famous case of *Daniel Latifi V. Union of India (2001)*, a writ petition was filed under Article 32 challenging the constitutional validity of the Act as it provides special provisions to women and is violative of Article 14 of the Constitution of India. The petition was dismissed by the Supreme Court of India. Thereby, upholding the validity of the act.

Leading Case Law on Maintenance

- **Swapan Kumar Banerjee v. State of W.B., (2020) 19 SCC 342**

Held:- Delay of 1 year in claim for maintenance - Delay will make no difference because it is for the wife to decide when she wants to file a petition for maintenance. She may have felt comfortable with the earnings she had upto that time or may have not wanted to precipitate matters till she was contesting the divorce petition by filing a claim for maintenance. Mere fact that wife did not file a petition for grant of maintenance during pendency of matrimonial proceedings is no ground to hold that she is not entitled to file such petition later on.

Maintenance- sufficiency of income of wife - Held, it is for the husband to lead evidence to show sufficiency of income of wife. In absence of such evidence no presumption can be raised that the wife is earning sufficient amount to support herself.

- **Lalita Toppo v. State of Jharkhand, (2019) 13 SCC 796**

Protection of Women from Domestic Violence Act, 2005 - Act or omission defining domestic violence is broad enough to include all aggrieved persons including a not legally wedded wife and those not entitled to maintenance under S. 125 Cr.P.C. Under PWDVA the victim would be entitled to more relief than what is contemplated under S. 125 Cr.P.C.]

- **Kamala v. M.R. Mohan Kumar, (2019) 11 SCC 491**

Long cohabitation between man and women led to presumption of marriage entitling maintenance to the woman and children born to them.

- **Nutan Gautam v. Prakash Gautam, (2019) 4 SCC 734**


Direction of High Court compelling wife to choose only one forum, either under S.125 Cr.P.C. or Ss. 12/19 of Protection of Women from Domestic Violence Act, 2005 to seek maintenance, held to be impermissible.

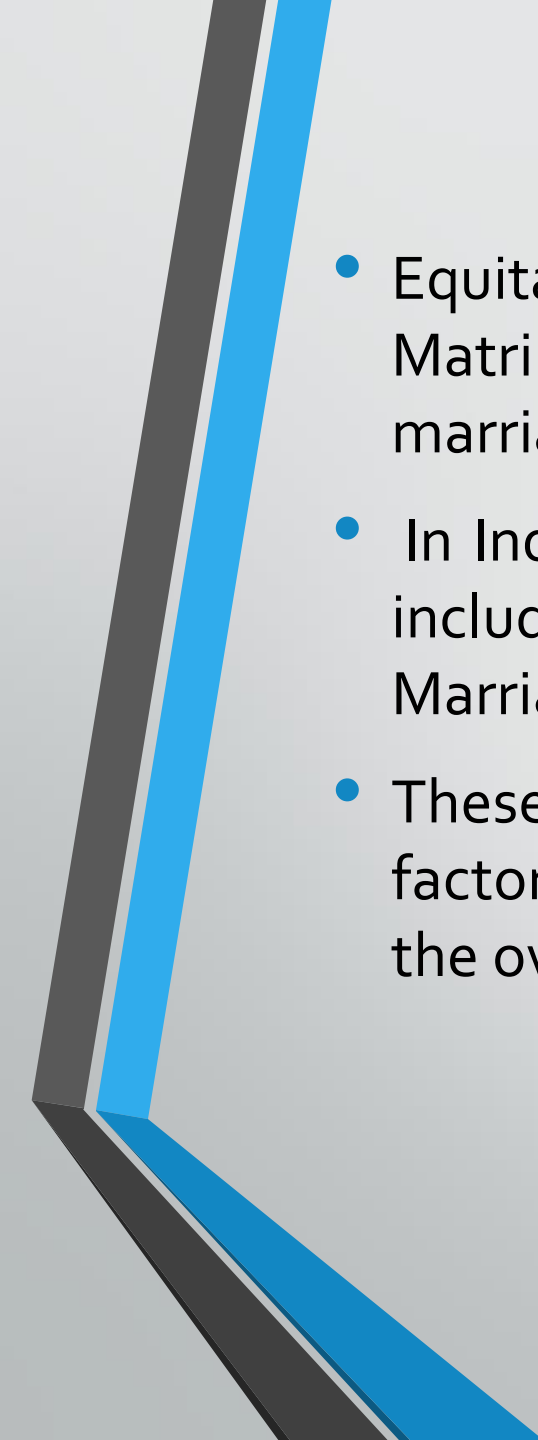
- **Manish Jain v. Akanksha Jain, (2017) 15 SCC 801**

Grant of maintenance pendete lite - Discretionary exercise of jurisdiction while granting alimony pendente lite should be judicious and can neither be arbitrary nor capricious but should be guided on sound principles of matrimonial law, and to be exercised within the statutory provisions having regard to the object of the Act. While determining quantum of interim maintenance, Court must have regard to income of the parties, and is conditional on the circumstance that the wife or husband who makes claim has no independent income sufficient to support him/her or to meet necessary expenses. Financial position of wife's parents as well as education of wife who could support herself is inconsequential.

II. Matrimonial Property

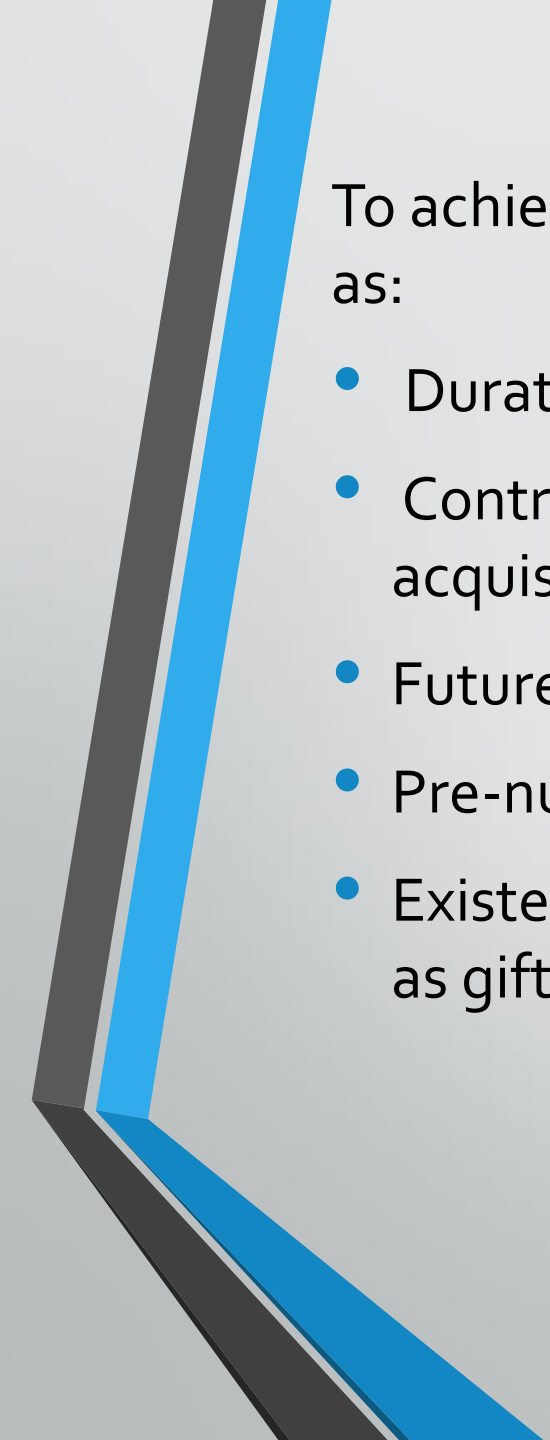
- Matrimonial property is one of the most important issues pertaining to the institution of marriage.
- Indian laws need to make clear provisions regarding 'Patrimonial property' and its share among spouses
- In spite of immense contributions made by women to the household economy, they receive unsatisfactory financial support. Their contribution to the growth of the family is not seen as productive work and therefore they are not given any economic co-ownership with equal rights.
- Marriage ought to be recognized as an 'equal economic partnership' between the husband and the wife.

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- In order to emphasize on the issue, an attempt is made to closely analyze the inheritance rights of women in different legal systems
 - Matrimonial property is one of the most important issues pertaining to the Institution of marriage. Despite the significant economic contributions that women provide to the household, they do not receive significant financial support. Since their contribution to the family's development is not seen as productive work, they are not granted any "economic co-ownership with equal rights".
 - The husband and wife's relationship should be viewed as a "equal economic partnership". Regarding matrimonial property and the distribution of it among spouses, Indian law needs to be more specific.

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- Equitable division of matrimonial property is another important aspect. Matrimonial property includes assets acquired during the course of marriage, such as real estate, investments, and personal possessions.
 - In India, the division of matrimonial property is governed by various laws, including the Hindu Succession Act, the Indian Divorce Act, and the Special Marriage Act.
 - These laws attempt to ensure a fair division of assets, often considering factors like contributions made by both spouses, their respective needs, and the overall circumstances of the case.

Matrimonial Property Division

- In the division of matrimonial property, the goal is to ensure an equitable distribution of assets and debts accumulated during the marriage.
- The principles of equity and fairness guide this process, particularly when the ownership of assets, such as real estate, businesses, investments, pensions, or personal belongings, needs to be determined.
- Different jurisdictions follow different approaches for property division, such as community property or equitable distribution.
- Community property mandates an equal split of assets and debts acquired during the marriage, while equitable distribution focuses on a fair distribution while considering various factors, including the spouses' financial situations, contributions, and needs.



To achieve equity in property division, courts or mediators evaluate factors such as:

- Duration of the marriage or relationship
- Contributions of each spouse (financial and non-financial) towards the acquisition, maintenance, or growth of assets
- Future needs, earning capacities, and financial independence of each spouse
- Pre-nuptial or post-nuptial agreements, if any
- Existence of separate property (assets owned prior to the marriage or received as gifts or inheritances) and its impact.

Challenges

- Achieving complete equity in these matters may not always be possible or feasible due to numerous complexities and unique circumstances of each case. However, the objective is to ensure a fair and reasonable outcome that considers the needs and contributions of both parties involved.
- Often we find that in order to not grant fair maintenance to the petitioner wife usually the husband (respondent) alienate major part of his property either in name of his family members or in name of strangers well before the order of maintenance. It is a big challenge before the trial court to ascertain the proper financial position of respondent husband in order to grant fair compensation.

Leading Case Law on Matrimonial Property

- **Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1**

Daughter's right in coparcenary property - daughter who is alive on the date of enforcement of the amendment i.e. 9-9-2005 becomes a coparcener on the said date irrespective of whether she was born before the amendment

- **Krishna Bhattacharjee v. Sarathi Chowdhury, (2016) 2 SCC 705**

Entrustment of Stridhan to husband - Held, stridhan property is the exclusive property of the wife. On proof that she entrusted the property or dominion over the stridhan 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 any other member of the family. It is always a question of fact in each case as to how the property came to be entrusted to the husband or family member. The concept of continuing offence gets attracted from the date of deprivation of stridhan. Neither the husband nor the other family members can have any right over the stridhan, they remain the custodians.

- **Bobbili Ramakrishna Raja Yadad v. State of A.P., (2016) 3 SCC 309**

Dowry/stridhan if placed in custody of husband or in-laws, they would be deemed to be trustees of the same.

- **Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370**

The concept of stridhan property of a woman is not abolished by Section 27 of the Hindu Marriage Act and Section 14 of the Hindu Succession Act. A pure and simple act of entrustment of the stridhan to the husband does not constitute a partnership.



Thank You