

# How to FIGHT



and

# REDUCE MAINTENANCE

under

## CrPC 125

and

## DV Act

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# How to Fight and Reduce Maintenance under CrPC 125 and DV Act

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# Ch 1. Introduction

# Who am I, and why I decided to write a book on this topic?

Dear Reader,

My name is Vivek Deveshwar. I came into contact with men's rights activists in India in Jun 2009, to get guidance on how to deal with multiple cases filed by wife - two family court cases (divorce along with maintenance under HMA 24, and child custody), and a criminal case under IPC 498A.

I soon became active in SIF yahooogroup and weekly meetings in Cubbon Park, Bangalore. For several years, I worked under SIF banner doing meetings coordination, counselling of new members, dharna/activism, and sharing information in online forums and my own blogs. That brought me into contact with men's rights activists in Bangalore as well as all over India.

Few years later, in Apr 2012, I along with like minded people started a new organisation [Centre for Men's Rights](#) in Bangalore. In late 2013, I re-enabled and re-named my then dormant blog by the name Nyaya Yodha - Justice Warrior into [Men Rights India](#) (hereafter called MRI or MRI site) and started posting new articles more regularly. Slowly the number of visitors increased from barely 10-20 per day to a few hundred within 6 months, and continue to grow further as I write this. The MRI site is the focal point of both my men's rights activism and expression of my views on latest news and judgments. It is quite likely that you may have come to know about this book from MRI site.

## My qualifications to write such a book

I am not a trained advocate. I am an engineer by training, and took couple of law courses during my part time MBA course. That's about my formal education on law. But practically speaking, I can claim lot more credits for my legal acumen, having fought for a while my own family court cases party-in-person and got good interim orders in maintenance under HMA 24. Also, in 2013, I had filed 2 consumer court cases in Bangalore district consumer forum against Panasonic and Flipkart respectively, and won both of them representing myself without a lawyer (party-in-person is not uncommon in consumer courts). My consumer related blog posts on my personal website [What goes around, comes around](#) attract good number of visitors everyday, and I happen to answer people's consumer court related issues almost on daily basis.

But mainly, as a men's rights activist I have had the chance to discuss with hundreds of men their legal cases and that experience has given me a clear understanding of how the system works and how it does not work. My perspective has been to help men find practical solutions in their difficult situations. I want to share all of that by way of this book.

## Why I chose to write this book

Due to my close involvement with men's rights, almost daily I keep getting ideas in my mind about conveying something new and useful to men with marital issues. I have been doing it through MRI site, but it seemed that the blog was probably not the best way to convey certain things. There are some limitations of communication which come with the medium. Blog articles are something people find through google, or via a share on Facebook. But when people read a blog post, their minds are programmed to quickly scan the webpage and get some useful information out of it in a very short time, and then move onto something else. A book however, sets the tone in a different way by allowing the reader to immerse himself in its contents without distraction, thereby gaining a cohesive and overall perspective, which is lost when one flips from one website to another. It is my belief that

some of the messages I want to convey will be better done in a book format, so I decided to work on a book rather than posting more articles on MRI site.

At the same time, the book will link to posts and judgments on MRI site as well as other web pages to avoid repetition of long texts of the judgments in the book.

### **A note on writing style in this book**

Writing a book requires higher standards than writing a blog post, but it is not my attempt to make this into a text book, or a literary or legal work. So I have adopted an easy-going and engaging style with the reader in this book too, which may be familiar to readers of MRI site. It is my conviction that reader can grasp things better when he is enjoying what he is reading, rather than when getting bored. So if you see in the book usage of words and phrases like “it’s” rather than “it is”, or “don’t” rather than “do not”, it is not because I am not aware of standards of good writing, it’s just that I prefer a style which is conversational rather than academic.

### **A note on spelling or grammar errors in the judgment extracts and people’s questions**

I strive to have zero mistakes in any spelling or grammatical errors in my own written points or commentary on bare acts or judgments. The spellings of words follow British English and not US English. Now, many portions of the book contain extracts of publicly reported judgments, and I have reproduced extracts of them exactly as they are reported and accessible in public databases. These sometimes contain typing errors because of the fact that the judgments are dictated by judges to typists, who type them usually under time pressure. Probably the spelling mistakes happen because the typists are required to finish it quickly rather than worrying about perfect spelling or grammar.

So if you find some spelling errors in the judgment extracts, it’s simply because of above reason. Sometimes there are more egregious errors which change the meaning of a sentence to the opposite of what’s intended. Examples of these can be substitution of *petitioner* for *respondent* (as a friend reported to me in his case), or *he* for *she* (in a matrimonial case), but errors of those kind are not present in any of judgment extracts in this book. At maximum, it will be spelling errors or typos.

The reason I don’t want to change anything inside the judgment extracts is because there is no limit to what all things I can change: should I correct only spelling errors, or also correct grammatical errors? If I attempt to improve the grammar, what happens if my ‘improved’ judgment starts looking quite different from the original judgment! Usually the intention and meaning of a judgment is never in doubt, so I have decided **against improving the aesthetics, in favour of adherence to original text.**

Similarly, in few places, I have reproduced verbatim questions asked by community members, without correcting the spelling etc. The meaning there is quite clear though.

Outside of judgment extracts and verbatim reproduced questions, if you find any errors in the book, kindly report it via this [Contact Page](#).

### **Gender He for She**

Since this book is mainly meant for male readers - even though few readers may be women - I will continue to use “he” as the pronoun to refer to the reader, which may be taken to mean he or she. May the politically correct ones make peace with that, and most likely they are not the ones reading this book.

### **Legal disclaimer**

In plain English, I state that I am not a lawyer, and this book is written for purpose of education, entertainment, and maybe myriad other reasons the readers may want to use this book for. But the contents and advice given in the book should not be taken as professional or legal advice, and I will not be held responsible for any consequences whether good or bad arising out of reader following the material in this book.

# Purpose and perspective of this book

The book is an attempt to convey a working understanding of maintenance laws to men who are facing such cases from wives. Not knowing the law is not an excuse for avoiding liability under it, so one might as well spend some time and effort to educate oneself about the maintenance laws.

There would be ample number of legal books available in market to explain about CrPC 125, DV Act. These books usually are not read by husbands for the following reasons:

1. Their whole approach and manner of writing is very legal, their intended audience being law students or advocates. So general public and laymen are unable to make much use of these books, and many are in fact intimidated to go through them.
2. These laws are made for women, so most books which are available are actually written from perspective of how to help and guide women to use these laws. Good luck finding something useful for men in these books.
3. There is a category of books that are written for husbands which usually start with the title: "Cruelty to Husbands". The title itself conveys the primary audience is for men desiring to apply for divorce on wife based on grounds of cruelty. Now these books may contain something about maintenance also, but that message is buried deep somewhere inside the book, and it is not the main topic of these books anyway.

Lastly, one of the subtle yet important points I want to make is to warn against putting blind trust in learning from past judgments and past precedents, which should extend to judgments covered in this book too! Laws of maintenance maybe relatively simple, but the judgments being given under these laws will continue to evolve as more and more women file fresh maintenance cases, with different circumstances in each case. In maintenance judgments of last few years, courts are already wising up to the fact that many maintenance applications have no real basis in terms of woman having being driven out because of husband's cruelty. They are just a convenient tool getting exploited by many unscrupulous women who want to do a wrong, and yet get benefit of their own wrong. The divorce industry is a willing participant, since it will be difficult for many advocates to refuse the temptation of fees from 'easy' matrimonial litigation, relative to other branches of law which require more effort to earn the same amount. So the task of creating new precedents under maintenance laws, will fall on the shoulders of husbands themselves who are facing such cases. I sincerely hope that some men will be able to create such precedents after getting information from this book.

This book is written with perspective of helping men, and not expound on or spend time describing the benefits of maintenance laws to women. This book takes the approach that reducing maintenance, and especially at the interim stage itself, is the smartest and best strategy for men whenever any marital litigation starts. All other cases like 498A, 406, divorce etc can wait, and wait they will anyway, in deference to fighting the maintenance cases with full vigour. I will explain more about this later in the book.

The scope of the book is as to cover topics on basic strategy to fight cases, history and logic behind maintenance, the bare acts of maintenance under CrPC 125 and DV Act along with implications, useful judgments and precedents to reduce or avoid maintenance to wife, along with other useful chapters on court procedures, court processes and what to expect, how to engage and manage lawyers, how to draft objections, collect evidence, making overall strategy, executing the game plan, and tactics etc.

## Why is this eBook not free?

Best things in life are for free, many men's rights activists (not all) help the 'victims' for free, so why should a book which helps men in fighting maintenance cases not be given for free?

I can give a really long answer on this question. But to cut the story short, when I was thinking on writing an eBook on topic of maintenance, I had done a small survey in [Men Rights India Facebook group](#) to ask the members about how much they would be willing to pay for an eBook on this topic. Out of 15 or so responses, not even one opted for the free choice. Maximum votes were for price being Rs 200 or more if the contents of the book are good.

That's when I decided to focus on writing a book which is good enough to justify its worth to readers in terms of its price, rather than becoming responsible for adding one more downloaded file to people's computers which will never get read! My guess is that there is lot of stuff available on the internet for free, but people still would prefer something concise and in one place which can answer all their questions. The information might be all there distributed on various websites, but it can also lead to conflicting information, confusion, and information overload rather than gaining of knowledge and wisdom.

Besides, all the judgments related to maintenance in this book are posted anyway on [Men Rights India](#) and other public websites, so what this book attempts to achieve is something different. It is to provide an understanding of maintenance, understanding past precedents in maintenance cases, psychology of courts and judges, dealing with your advocate, managing your cases etc. So with such an overall knowledge one can create a good overall strategy with clearly defined plan to execute it. That is a goal not achieved easily via MRI blog for the reasons I mentioned before.

My hope is that if one reads it with an open mind without looking for a quick formula or secret judgment/citation, one can recover the cost of book many times over. Merely by learning how to manage and communicate with one's lawyer well, one can reduce the legal fees quite a bit. So one can think of it as investment of a few Rupees and few hours of time into self-education. While we may claim we are unfortunate to face these legal situations, if we refuse to educate ourselves, we ourselves will turn out to be the losers.

## **Intended audience**

Most of the people who approach men's rights activists are facing false accusations both in civil/family court cases, and in criminal cases like IPC 498A, 406 etc., and the book is especially meant for them. It is very much possible that a few people who may purchase this book may not belong to above category, for example they could be advocates, or maybe men who haven't really faced many false allegations but want to read this book as a way to reduce and avoid maintenance. All the techniques and knowledge shared in this book are well within the legal boundaries, so we don't want to judge anyone thinking that someone will use the knowledge in this book to harass his wife. It is very similar to the fact that one can use knowledge of income tax laws to reduce tax liability, but those who don't care to read income tax laws may be unaware and might be paying higher taxes quite unnecessarily. Ultimately, what's within the legal boundaries is fair game. Also, going by experience of men who have faced cases by wives, their wives are using the law to it's full extent possible by filing cases one after another, so it is quite fair that husband should also use the law to his own advantage now that the marriage and relationship itself is under severe threat and seems beyond repair.

Note: the book is written from perspective of men who face false cases of maintenance and domestic violence allegations under CrPC 125 and DV Act. This book may not seem to be written in a neutral style trying to balance possibility of some genuine domestic violence cases versus the false cases. The reasons for that missing neutrality are very clear: a 93% acquittal rate in IPC 498A cases, another legislation created in 1983 with intention to curb violence against women and save their lives. Criminal cases like IPC 498A, 406 along with quasi-civil like DV Act are used as potent weapons within the divorce industry and the weapons are always fired in one direction - against husbands! So unless the government publishes a white paper on use and misuse of the various women protection laws, we proceed with the underlying assumption that these laws are being severely misused and abused. The intended audience and topic of this book is very clear, and it's not about protection of women.

## What this book will not cover

The book will not cover maintenance under other acts like Section 24 of Hindu Marriage Act, 1955 (HMA 24) or even rarer Hindu Adoptions and Maintenance Act (HAMA) because:

1. Most of the men on whom their wife had filed cases first - report them to be under CrPC 125 or DV Act (Protection of Women from Domestic Violence Act). The percentage will be close to 90-95%.
2. A few men file divorce cases on wives not realizing that she can also claim interim maintenance under HMA 24. Also, very commonly the wife may file a 498A case in retaliation, and a DV case too to claim maintenance. So in the end many men who file divorce end up dealing with maintenance case under DV Act or CrPC 125 anyway.
3. HMA 24 becomes active when either party to marriage files a case like divorce, RCR (Restitution of Conjugal Rights), and so on. Most women do not file a divorce case to claim interim maintenance, because filing CrPC 125 or DV Act case gives them a much easier option, and an *abla-naari* (helpless woman) image too.
4. Trying to cover maintenance under HMA 24 will invariably lead to discussion about divorce/RCR etc, which is a different topic and may tend to distract from the main focus of this book which is on denying or reducing maintenance.

Also, though many people who face DV Act or CrPC 125 cases also have other criminal cases like IPC 498A on them, in this book we don't want to cover them because it will distract from the main topic which is how to reduce maintenance, both interim and final. I am convinced that reducing maintenance is the core pillar of the strategy to fight false cases by wife, and I will explain why in more detail later. So we don't want to mix up too many things, cause indigestion, and end up making readers even more confused about the right course of action. Next chapter explains reasons behind this approach in more detail.

## Often used terms and references in the book

In the book, we will be referring to bare acts of CrPC 125 and DV Act quite often and they can be referred to at the following links:

<http://menrightsindia.net/bare-acts/crpc-125-bare-act>

<http://menrightsindia.net/bare-acts/the-protection-of-women-from-domestic-violence-act-2005-bare-act>

Also, the appendices at the end of the book contain full bare acts of CrPC 125, PWDVA, PWDVA Rules, and Family Courts Act.

### Often used terms in the book

*Bare act*: The bare wordings of a statute or law, without any added commentary or case law discussions on it

*CrPC*: Code of Criminal Procedure

*HMA*: Hindu Marriage Act

*MRA*: Men's Rights Activist

*MRAs*: Men's Rights Activists

“*MRI*” or “*MRI site*”: refers to the site <http://menrightsindia.net>

*PWDVA*: Protection of Women from Domestic Violence Act, 2005

# Glossary and Reference

## Basic legal terms used in the book

*Adjournment:* the postponement of a court proceeding or session until another date

*Act:* a statute enacted or passed into law by a legislature or Parliament

*Applicant:* person who applies to the court for a remedy or relief set out in an Application

*Application:* a request of the court to make an order for the remedy or relief requested

*Argument:* the address or presentation to the court by the parties with the aim of persuading the court to make a decision in their favour; the argument is not evidence; may be in written form contained in a brief submitted to the court; also “closing arguments” used to describe closing remarks or address to the judge before final order

*Ex Parte:* where a court proceeding is heard in the presence of one party only and without notice to the other party(s)

*Injunction:* an order of the court requiring a person to not do some act or not continue to do some act that the court considers they have no right to do

*Interim application (IA):* An application made to court to get an interim relief while the final disposal of the case is still pending

*Interim Order:* a decision of a court that is not the final outcome of the matter; commonly occurs in family law cases where an interim order is made by the court regarding issues that may ultimately be decided at a later date, i.e. at a trial

*Jurisdiction:* the scope of authority given to a particular court, tribunal or other decision-making body; the types of cases a court or decision-making body has the power to determine; the geographical area in which a court or decision-making body has the power to make decisions

*Party:* a person who is plaintiff/defendant or applicant/respondent in a civil proceeding or in a criminal context, a person who actually commits an offence or who is liable as a party to an offence by reason of aiding or abetting or conspiring or counselling the commission of an offence

*Petition:* a document which commences a civil proceeding other than an action or law suit; a Petition usually seeks from the court relief that is set out under a particular statute, for example a Petition for a Divorce

*Precedent:* A principle or rule established in a previous legal case that is either binding on or persuasive for a court when deciding subsequent cases with similar issues or facts.

*Prima Facie:* a Latin term meaning “at first sight”; used to describe a fact that is presumed to be true unless disproved by contrary evidence

*Service:* the delivering to a person of a copy of a document that has been filed with the court; the manner of service, for example in person, and time frame within which service must occur is set out in the Rules of Court or in the particular statute governing the case

*Summons:* a document which requires a person to attend to the court on a specified date and time to answer or respond to a complaint filed with the court; a process in criminal proceedings to require an accused person to attend court to answer to a criminal charge

*Vakalatnama:* Vakalatnama is the Urdu term which means a person signs a document which gives authority to an advocate of his choice to plead and argue his case on his behalf. The advocate and his associates/juniors can also plead the case.

*Warrant:* a command or order of the court; there are numerous warrants in criminal proceedings such as an arrest warrant which is an order of the court to arrest an accused person and bring him or her before the court to answer to the offence with which the person has been charged; or a search warrant which is an order of the court permitting the search by peace officers of a particular premises for particular things respecting a criminal offence that are to be brought before the court

## **Other useful legal terms to know**

*Affidavit:* a written statement of fact either sworn or affirmed by the person making it (called the “deponent”); a form of evidence (in contrast to verbal testimony given in court) filed and to be considered by the judge in deciding a particular matter

*Amicus Curiae:* a Latin term meaning “friend of the court”; commonly found in family law cases; usually an advocate who assists the court in some matters

*Appellant:* the person who takes an appeal of a decision of a court or other decision-making body

*Common Law:* the law stated in the decisions of judges from early times to the present

*Civil Case:* a court proceeding which involves legal issues between individuals/organizations/governments; court proceedings other than criminal matters

*Costs:* see Solicitor and Clients Costs or Party and party Costs;

*Counsel:* another term for lawyer as in “legal counsel”

*Leave:* the permission of the court to proceed; for example, to “seek the leave of the court” to file an appeal

*Pleadings:* the documents that are filed with the court by the parties to a proceeding which sets out the issues or matters to be determined by the court; the foundational documents which form the record of the case with the court

*Point of Law:* a question regarding a law or legal issue as opposed to a question regarding the facts involved in a legal proceeding; a term often used in determining whether an appeal can be taken of a decision. Some appeals can only be made on a point of law, and not in regard to the facts of the case as they were determined by the trial judge. However, in some cases, the difference between a point of law and a point of fact may be unclear or mixed

*Registrar:* an officer of the court office or “registry” who receives documents for filing with the court and who has authority to certify or confirm decisions on behalf of the court

*Short date:* a request of the court that a matter be heard by the court, i.e. a motion, within a time frame that is shorter than what is normally required by the rules of the court; usually short date is asked for when the matter is considered to be urgent by the requesting party

*Note:* Many of the terms above have been taken and modified from the webpage below from official legal website of a province in Canada. I find these legal definitions to be very concise, well-written, and similar in meaning to the usage assigned to them in Indian courts too.

### **Other common terms used in text of judgments**

*Coram*: a Latin word meaning “in the presence of”; often used in appeal court judgments indicating the panel of appeal judges before whom a case was heard;

*Impugned*: To attack as false or questionable; cast doubt, challenge, raise questions. Commonly found in appeals where the term “*impugned judgment*” means the judgment of a lower court which has been appealed against in higher court.

# **Ch 2. Why fighting maintenance cases well is the best strategy?**

# Usual sequence of events in a typical case which comes to MRAs

It's very common to see people who approach MRAs (Men's Rights Activists) getting slapped with multiple cases, either within few months, or one by one in a slow-torture procedure followed by wife/in-laws.

Most common sequence of events is as follows:

Note: you may also want to read the [advice to men mega-post](#) about more details of scenarios and phases summarized below.

## Phase 1: Acclimatize the husband to what's coming next - Domination!

1. Wife creates trouble or quarrels start within few days or weeks of marriage. Husband doesn't know it yet that wife comes from a feminist/matriarchal family where mother is the dominant person in the household (even if not so in public).
2. Wife creates many incidents where she complains either about husband's mother, or about husband himself.
3. She may not do usual expected duties of wife like cooking, taking care of household (assuming she is a housewife which is the scenario in 80-85% of cases).
4. Husband may feel there are a few positive things also in this early part of marriage, like honeymoon experience and so on. So having had no experience of such situations being created by wife, he usually thinks that it is just teething troubles of early marriage and things will get better over time.

## Phase 2: Time to test the husband: Wife leaves husband's house and go to her parents' place

1. Common scenario in this phase is that husband keeps thinking in very straightforward manner that this is just a passing phase.
2. So he dutifully opens up communication with wife/in-laws to bring her back.
3. This is the first test of the newly-wed man, so the in-laws will take this opportunity to insult, humiliate, dominate him. They will tell him of certain flaws in him, or certain things he should have done but he did not do.
4. Our man will be surprised and startled, but still he will dutifully listen and think that in-laws are like parents/elders; and anyway there's no harm in listening to some unjustifiable insults if it results in wife coming back. So that's exactly what he does and brings back the wife.
5. Husband thinks that things will be all smooth from now. He is happy and looking forward to trouble-free life and marital bliss. But unknown to him the feminist/matriarchal in-laws and wife have conducted their first successful test on him and understood his weak points for future exploitation.

## Phase 3: Maybe few more tests, then go for the siege

1. Now the wife and in-laws have seen husband's weak points. Mostly he seems like a nice, middle class guy from a middle class Indian family. This is exactly the kind of soft target feminist families want to see in their son-in-laws. Law abiding, god fearing, good citizen kind of folks who can buckle under pressure of false cases and believe that legal or police cases are a blot on their family reputation.

2. In this phase, there may be few twists depending on each case. Usually the wife will leave for her parents' place based on some fight or excuse and then they will keep quiet for a few months. The idea is to frustrate the husband and make him feel guilty as to what is missing in his behaviour that wife doesn't seem to be happy.

3. Sometimes the wife gets pregnant and leaves for delivery to her parents' place. After that they just keep quiet and keep husband guessing and frustrated more and more with passage of time.

#### **Phase 4: Frustrated husband goes legal: sends letter, legal notice, Section 9(RCR), or divorce**

1. Earlier we used to see women filing IPC 498A or DV cases after phase 3. It seems within last couple of years the trend has shifted towards not filing any case on husband, but just keeping quiet and letting the husband initiate something.

2. Usually husband approaches some advocate for advice and the usual advice of advocates is to use the law to bring wife back. If they sense the husband to be totally unhappy with married life, they may suggest to apply for divorce sensing his frustration. What else can an advocate suggest anyway? As the saying goes: when the only tool you have is a hammer, every problem looks like a nail! Since advocates are trained to think in legal solutions to problems, they give people a legal solution. And most people take it. I must add that there are some advocates who suggest not to file any case but that maybe is seen only in 5% of cases. And although they have given a wise advice, the husband probably thinks that a lawyer who is not giving a legal solution to his problems is not a good lawyer, so he promptly finds another lawyer who tells him what he wants to hear!

3. So depending on the legal approach taken by husband, he may send a letter/legal notice to ask wife to come back, or take more legal route by filing RCR (restitution of conjugal rights) under Section 9 of HMA (Hindu Marriage Act), or he may file for divorce itself.

4. Usually what happens next is never expected by husband. It is never told by lawyers too. Upon filing of any case like RCR or divorce, wife can ask for maintenance under Section 24 of HMA. But these days it is not the preferred route. Usually they file a CrPC 125 or a DV (domestic violence) case on husband. Both are meant to get maintenance.

5. Filing IPC 498A by wife/in-laws at this stage itself is becoming a bit less popular. But usually filing IPC 498A is very common after husband files for divorce.

# **IPC 498A, 406, DV Act, CrPC 125, RCR, Divorce. Which one is most important?**

Usually in North India, the cases do not start from an FIR under 498A or 406 directly. But it goes to CAW (Crime against women) cell first. There the husband is called for counselling where it is 'counselled' to him that unless he takes his wife back, his life could become hell, and he and his parents may have to face criminal cases under 498A, 406 etc. Fake list of stridhan/dowry articles is another problem he has to deal with.

In the South, thankfully CAW cells do not exist. However in Karnataka, Vanita Sahayvani is a kind of women's helpline, where sometimes husbands get called to if a wife files a complaint there first. The kind of counselling provided to husbands there is very similar to what goes in CAW cell - but without the torture about 406/stridhan/articles list etc. So it is a relatively mild experience compared to CAW cell.

So husbands are given two choices which are really not choices – Take back wife who is a threatening, quarrelsome, not easy to live with female. Or be prepared to get criminal cases slapped on him and his family.

So he gets bogged down at this stage in issues like: how to get anticipatory bail, how to handle fake list in 406, and so on.

If one of the legal cases like RCR or divorce (filed by husband, wives don't file divorce at this stage) has gone to court, the drama that is called mediation is also foisted upon the husband.

So a few months pass in all this rounds of CAW, mediation, and so on. Many men think that marriage can still work out and wife can come back.

Mostly that's never how it turns out. The feminist/matriarchal family of wife/in-laws were never interested in the marriage anyway. They picked a soft target by finding a son-in-law who is most likely a high earning professional, raised in a law-abiding, good citizen, nice folks type of family. The kind of people who want to play by fair rules and trust that others will also play fair. Basically the husband's family show many traits of nice guy syndrome!

## **Interim maintenance - Minor headache, or Enemy Number One?**

During all this, the interim maintenance petition of wife is heard in CrPC 125 or DV case. Husband is so busy in thinking of various options like bringing wife back, getting anticipatory bail, dealing with CAW/counselling etc, that he may not even think that fighting interim maintenance is very important. He may leave it to his lawyer.

Wife gets an interim maintenance award. It maybe anywhere from 5K to 10K or even more depending on husband's salary. It's only after a few months the husband realizes that while he has to fight these cases which may go on for years, he has to pay interim maintenance to wife all the while!

And he also realizes with passage of time that all the counselling in CAW about wife coming back, mediation etc were also just drama. Or maybe many people deny it but subconsciously they must be realizing that what they thought to be a marriage was actually a scam foisted on them!

## **Interim maintenance and maintenance are the top problems**

I want to convey by way of this book that the top problems faced by Indian men are the interim maintenance and maintenance. The pace of Indian judiciary is extremely slow. Divorces on grounds of cruelty (assuming you have great evidence) are not given within less than 5-7 years, and more if wife goes for appeal to higher courts. While all these cases including criminal ones(if any) continue to run, husband is made to bleed by way of paying maintenance to wife who uses some of that money to engage lawyers and so is least bothered how long the cases will run for.

So your money is used against you. It's like supplying ammunition to opponent forces who fire the same ammunition back at you!

So reducing maintenance amount whether in interim or final orders should be the top priority of all men facing marital cases from wife. Anything else will be less than optimal.

Collecting evidence for proving innocence 498A can wait, filing RTI or TEP (tax evasion petition) can also wait. But fighting maintenance cases cannot wait because the interim orders may be given anywhere within 3-9 months and usually don't get delayed more than that.

# **Golden rule: Fight interim maintenance case whether under CrPC 125 or DV Act (or even HMA 24), as if your life depends on it**

## **The dangers of high interim maintenance**

1. Wife continues to get interim maintenance every month, so she is least bothered about finishing up cases quickly whether she has initiated maintenance cases or you have initiated a divorce.
2. Only in cases where wife has a boyfriend she may be in a hurry to get a divorce decree. But that is not true for every case, and even then they usually will not come to zero settlement mutual consent divorce quickly unless husband gives solid evidence to discredit them. Generally speaking, such women will never lose the opportunity to earn good alimony from first husband even if a boyfriend is waiting in line. Also, in many cases it is found that the boyfriend is himself not a respectable kind of person and he is playing along probably to have comfortable life later with money earned from wife's first husband.
3. Unscrupulous women's main motivation is extraction and extortion of money. Many of them are not even bothered about getting a divorce, since probably a married status with maintenance works very well, especially for those with children. As long as they are able to extract a high maintenance every month, they can coolly wait for husband to lose patience and agree to a lumpsum settlement.

## **The advantage of low interim maintenance**

1. Wife gets Rs 2,500 or 3,500 per month, which is just enough to sustain her. Her hope of getting an instant lumpsum of 20 to 50 lakh or even more are dashed. That creates a psychological pressure and damage.
2. Now even if cases get delayed as they will get anyway in Indian courts, husband doesn't have to worry about bleeding a lot of hard earned money every month to parasitic wife. Paying 2,500 per month is much better than paying 10-15,000 per month.
3. Once interim maintenance is awarded, husband can focus efforts on other things like filing TEP, RTI, collecting more evidence and so on which will help to fight 498A/406 etc. But instead if he has to pay high interim maintenance, he will again go for appeal or revision thereby wasting some time there, which was unnecessary had he fought the cases well in the beginning itself.

Most people do the opposite by spending too much time on 498A even after getting bail. Then they try how to speed up the 498A case so it can be wrapped up within 2 years maximum. Their thinking is that there is someone somewhere sitting who is all eager to listen to their story that they didn't take a penny of dowry and so on, but unfortunately for them they have very little understanding of the Indian courts and the divorce industry. The whole game is rigged in such a way that husband will not get a chance to give his own evidence, or cross-examine wife's evidence for many years to come. All the hope of proving wife's cases to be false depends on leading evidence by both parties, and if that doesn't happen for next 4 years, what hope does husband have in the meantime especially if he is paying high maintenance every month?

So as things stand with respect to on the ground situation in Indian courts and realities of family law cases, denying or reducing maintenance should be the core pillar of husband's strategy in fighting legal cases which can be any combination of marital, maintenance/DV, or criminal cases.

# How and why men ignore maintenance cases and get trapped?

Men ignore maintenance cases because of the following reasons:

1. They think the situation is temporary, that wife is still trying to test them. That she might just come back once again, and in that case automatically the maintenance order will get revoked. They are given this false hope because of positive sounding names like counselling (in CAW) and mediation (in family courts and even DV cases). But the fact is that these proceedings whether under CAW counselling or under mediation, are basically about intimidating men, demonizing men, and making them feel guilty for no reason.
2. Divorce and such false cases ([my estimate is 1.5 to 2 lakh per year](#)) are still a small percentage of the overall marriages in the country (about 1 crore per year). So wider society has not been impacted and awareness about marital laws' misuse has not spread out widely outside the MRAs circle. It is quite natural that every husband who experiences such false cases by wife thinks initially that marriages in India don't break easily so things will sort out with time. Unlike the west, where divorce is so common that no one is surprised about that eventuality in one's own marriage, in India no one expects a marriage to break so quickly. This awareness is not there in wider public that many marriages are being done with sole intention of wife filing legal and criminal cases on husband and his family. So it won't be abnormal for most men to believe that this is a bad situation which will cool off rather than worsen.

The result is that by the time many men realize what they have gotten into: that wife is never coming back, that she never had the intention to live a normal married life, that this was a pre-planned scheme by wife/in-laws to extort and get rich at expense of husband. But by then they have been saddled with burden of paying a high interim or final maintenance amount of anywhere from 8K to 25K or even more per month to wife, depending on financial status and income etc.

## Suggested approach in this book

I suggest the following overall approach to handle cases filed by wife. This has been seen to be effective and many men were able to get mutual consent divorce with zero financial settlement to wife. Usually many of such people also faced IPC 498A and arrest possibilities in the beginning, which might have something to do with their resolve to fight cases right from the start. But we don't have the luxury of waiting for criminal cases to be filed before we take a firm stand against criminal behaviour of wife/in-laws in filing false cases.

1. Take a stand that you will fight the false allegations vigorously and will not be misled into accepting any guilt during CAW cell, counselling, mediation kind of proceedings.
2. Fight interim maintenance case wholeheartedly, and at that time keep any thought or possibilities of wife coming back as something the wife has to initiate and not you. That's because she was the one who left and initiated various proceedings, so any move towards rapprochement has to be initiated by her.
3. Once interim maintenance is reduced or even denied to wife, focus on other techniques of fighting like TEP, RTI etc as applicable and it varies from case to case basis. Discussing about them is not the topic of this book anyway.
4. In case for whatever reasons a higher interim maintenance is awarded, check the options possible for its downward revision, or of getting it reduced in the final order after evidence and cross-exam of both parties.

With above broad approach in mind, we will proceed to dive into the laws of maintenance like CrPC 125 and under DV Act in remaining part of the book. **Following are the broad areas which will be covered:**

1. Understand what is maintenance, the need for it, and the history behind it.
2. Develop a cool, calculated, unemotional approach to win the game, rather than betting on emotional responses like: "I will not pay a penny, and let's see what happens".
3. Understand why reducing interim maintenance and final maintenance are the most important things to do in overall fight. Why they are even more important than fighting IPC 498A/406, divorce/RCR etc?
4. Explore the bare act of CrPC 125 and understand its main points and their implications.
5. Explore the bare act of PWDVA (DV Act) and understand its main points and their implications.
6. Learn how to write your objections and deny DV allegations? Know which kind of evidences are helpful refute domestic violence allegations.
7. Understand the concepts and implications of shared household and residence order under DV Act. Should you sell your house to protect it from falling into wife's hands? Should you transfer the house to your mother's name?
8. What is a protection order? Understand all the sections under which wife can take your money under DV Act: monetary relief, compensation, maintenance. Learn the techniques on how to thwart these or minimize the damage.
9. Understand the process of summons and other court procedures in CrPC 125 and DV Act cases. Is

it a good idea to delay taking summons?

10. Ways to find and manage a lawyer, negotiate lawyer's fees, communication etc. Filing vakalatnama, appearing in court.

11. Find out what evidence to collect, and which evidence is most important to deny or reduce maintenance to wife. How to use CrPC 91 to get wife's employment records or bank statement etc. How to reduce own income in hand? Getting parents to file CrPC 125 on husband to reduce in-hand income.

12. Some common myths to avoid in fighting maintenance cases - like leaving one's job or filing RCR.

13. What happens if you don't pay maintenance? How much jail time can be ordered? Warning: Not a recommended 'strategy'.

14. What needs to be done if arrears of maintenance have accumulated? Can you file appeal to reduce maintenance if arrears are pending?

15. Go through important judgments/precedents about maintenance ordered under CrPC 125 and DV Act. Some judgments of HMA 24 are also covered to explain about maintenance principles, though discussion of HMA 24 is not in scope of this book.

16. The judgments on maintenance are divided into sections based on whether one's wife is working, qualified but left job, qualified but never worked etc. An easy approach is given on selecting the appropriate judgment closest to the facts of your own case.

17. Final thoughts and feedback.

Finally, the appendices contain full bare acts of CrPC 125, PWDVA, PWDVA Rules, and Family Courts Act for easy reference. You can carry this book on your Android or iOS mobile and refer to them anywhere!

# **Ch 3. What is maintenance and why it came into being**

# What is maintenance to wife, and its history

As part of men's rights work, we almost daily keep hearing such statements and questions from freshly victimized men:

1. I won't give a single penny to her.
2. How much maintenance can be awarded?
3. What will happen if I don't pay maintenance?

Sometimes the reactions are confusing and all over the place. Being emotional and acting righteous will not help win the maintenance 'game'. Yes, it does seem highly unfair that not only we have to deal with a woman's false allegations but we have to pay money to her while dealing with false allegations! In western countries it is better for men in some ways but worse in other ways. A western woman can file for no-fault divorce, and not only gets to keep the home/car/children, but also husband has to pay her legal expenses if she has no income of her own! In US, the average cost of divorce runs into \$50,000!

Why do we need to understand a bit of history and basic logic behind maintenance laws? For the simple reason that such knowledge can be quite useful to deny or reduce maintenance. Also, even though right now the regime in India is very favourable to women who ask for maintenance without proving any fault of husband, slowly but surely we have to incorporate the concepts from other countries to reform the maintenance and alimony laws in India too. Also, some of the factors of deciding maintenance discussed below can and should be used to argue against wife's maintenance.

Note that in US, the word for maintenance is alimony which means spousal support during separation/divorce/after divorce, and child support is meant specifically for the children and entirely different from the maintenance (if any) awarded to wife. From now on, we will use maintenance and alimony to mean the same thing.

Maintenance laws have probably originated since through most of history, a man was supposed to be the main breadwinner and one who worked outside the home; and the wife was primarily responsible for taking care of children and working the household. A man's labour (skilled or unskilled, leaving out the rich capitalists) used to earn him the income. Some of the man's income were to be used for running the house and it's quite natural that wife would have some claim over his earnings, so family/social norms and traditions came into being which supported that view.

So part of surplus labour of man was shared with the wife to take care of house and children. Now, all these things were fine till the time the married life and family was intact, but the question arises what happens when either the man or woman quits the relationship. There was the question of taking care of young children, and even if the couple didn't have children, the question could be raised since in many societies, women did not have property of their own after marriage. So how will such a woman take care of herself?

The laws of alimony or maintenance have arisen to take care of such situations. To understand the alimony laws, we have to understand the concept of with-fault versus no-fault divorce.

Traditionally, a fault divorce was the only means for a married couple to get divorced. It means that one of the spouses it at fault having committed one or more of: cruelty(mental, emotional, physical) , adultery, or deserted the other spouse for no good reason, impotence, among other grounds.

No-fault divorce is a divorce in which the dissolution of a marriage does not require a showing of

wrongdoing by either party. It became passed into family/divorce laws in various western nations in 1960s and 1970s.

One would imagine that the fault or no-fault of a husband should have an implication on the maintenance amount he can be asked to pay to wife. Unfortunately, things are not that straightforward.

# Factors used in US for deciding on maintenance

In India, the law and practice of maintenance has become something like that we have to award something to wife simply because she has applied for it under one of maintenance laws! This has become prevalent especially after introduction of the Domestic Violence Act (PWDVA), because that is a convenient way to include allegations of domestic violence, whereas the usual CrPC 125 was meant to help wives living separately from husband (but not without good reason), and was especially enacted to take care of abandoned wives and children.

Unlike India, where the law related to family/divorce are same throughout, in US the marriage and divorce laws vary by state. Many states in US have clearly defined laws related to maintenance. For example, in Texas, Mississippi and Tennessee, alimony is awarded only in cases of marriage or civil union of ten years or longer and the payments are limited to three years.

In other US states like California, Nevada and New York, there are no strictly defined rules like 10 year marriage duration etc to decide on maintenance. In these states, the judges decide on the maintenance amount based on “factors” to consider. These factors have come about based on past judgments in maintenance cases (case law). The factors used to decide about maintenance amount are:

1. Length of marriage. In Texas, Mississippi and Tennessee, for example, alimony is awarded only in cases of marriage or civil union of ten years or longer and the payments are limited to three years. In Maine, Mississippi, and Tennessee alimony is awarded in marriages or civil union of 10 to 20 years and the duration is half the length of the marriage barring extenuating circumstances.
2. Time separated while still married. Which means how do we treat the case of a couple who stayed together for 2 years, followed by separation for 2 years before one of them filed maintenance/divorce. Does it mean married life of 2 years, or 4 years? It varies from state to state in US.
3. Age of the parties at the time of the divorce. Generally the younger spouses are supposed to be able to do with lesser amount of spousal support.
4. Relative income of the parties. This is a factor recognized in India too.
5. Needs (not lifestyle or wants) of the parties. For example one spouse who may have health issues may be awarded somewhat higher maintenance.
6. Fault in marital breakdown. In U.S. states where fault is recognized, fault can significantly affect alimony, increasing, reducing or even nullifying it. In India there is no law as yet allowing for no-fault divorce, but the law recognizes this concept and therefore does not allow maintenance under CrPC 125 to wife who is living in adultery. It is very difficult to prove adultery, but the provision is very clear.

# Indian situation about rules and factors for deciding maintenance

In India, unfortunately for husbands, there are no clear-cut rules like maintenance allowed only after 10 years of married life, and so on. This results in an unfortunate situation for Indian husbands that if a marital dispute runs in court for many years, the husband has to bear the cost of wife's maintenance during all this period. Given the slow pace of Indian judiciary in both civil and criminal cases, as of now it is almost a guarantee that a marital dispute in court will continue to run for many years, maybe 5 years at the lower end of range and 7-10 or even more at the upper end of range.

However, Indian courts also apply certain factors to decide on maintenance amount, which is most often a combination of meeting basic needs, and giving same living status/lifestyle to the asking party. While a middle class man may be ordered by court to pay Rs 5000 of maintenance to wife per month, a film star like Om Puri may be asked to pay Rs 2.9 lakh maintenance per month to his wife and son! The logic given in ordering such high maintenance in his case was that his wife and son were used to that lifestyle, and his income was much higher, so the amount was not considered unjust or fanciful.

Over time, we have to bring the above factors like length of marriage, and no-fault of husband into deciding maintenance amounts in India too. Even if it may not happen immediately by amendment to maintenance laws, it is already happening in maintenance decisions where husbands (and their advocates) produce the complete evidence and put forth their arguments forcefully. Later I share many judgments where qualified or previously working wives have been denied maintenance. If it can be done by one person, it can be done by anyone.

## Rising incomes, rising maintenance

According to Wikipedia article on [alimony](#), it is interesting to note that even in US in 19th century, alimony was not awarded often because the incomes were so low.

However, during the period, parties could rarely afford alimony, and so it was rarely awarded by courts. As husbands' incomes increased, and with it the possibility of paying alimony, the awarding of alimony increased, generally because a wife could show a need for ongoing financial support, and the husband had the ability to pay.

So the learning from historical data is when the standard of living and incomes were not that high in US in 19th century, alimony were rarely awarded by courts. As the ability of husbands to pay alimony increased, the demands of alimony from wives also increased. And many husbands were probably not too unwilling to pay also since they had the capacity. The same dynamics continues till even today, in that rising incomes lead to higher alimony awards, and more women file divorces because it's possible to get a good alimony upon divorce. 70% of divorces in US are initiated by women, and [one report suggests same percentage to be 85% in India](#).

## Psychology of women who ask for maintenance/alimony

Alimony or maintenance asked by wives is never according to their needs alone, but according to what they can get as per the law. Just like in the US, in India too there is a guideline that a woman needs to be maintained at living standards she was used to while living with husband. The problem in India is that unlike in US, even a woman married for few days can leave the husband for no good reason and file maintenance case upon him!

It is seen that even ex-wives of millionaires ask for their 'fair' share of husbands' assets upon

divorce, and are willing to use top divorce lawyers to get the maximum amount possible. Most of the readers of this book may not be film stars or millionaires, but readers should lose the illusion that their wife will be content to accept her faults too and settle for a token alimony and leave them alone. That is not human psychology and it is not what we see in reality either.

In several cases recently it's been seen that the wife after marriage created some trouble, and then she discussed with husband that they will go for mutual divorce. She leaves with her belongings and things, and after few weeks or months she files multiple cases related to maintenance and domestic violence upon him, with the threat that criminal cases will be on the way. There goes our mutual divorce and amicable separation! If any reader of this book is in a similar situation, be very careful about any offer of a mutual divorce and amicable parting of ways made by wife. That's not how things work out in real life.

# **Ch 4. Understanding sections of CrPC 125 and implications**

# Why do we need to read bare acts

Reading the bare act of any law is a highly productive thing, and sadly, it is skipped altogether by many even after many years into their legal cases. If people took some time to read the bare acts, we will not be hearing questions of the kind:

1. My wife has filed DV case on me and parents. Will we get arrested?
2. Can my wife make a claim on my father's house?
3. My lawyer says that I cannot avoid paying maintenance. Is it true?
4. Is parents' assets and property also used to decide on amount of maintenance?

Now the good news is that CrPC 125 is not a very long section. If you can stay with me and read the important points in it, reading and understanding DV Act will also become easier. The important thing is to get over the usual aversion to reading legal things. For some (probably like me), it comes naturally like reading a piece of news, but for most it is not so easy. The good part is that is a skill that can be developed by anyone, and if you are facing legal cases, it's in your own interest to develop this skill.

## Section 125 in The Code Of Criminal Procedure, 1973: Bare Act

Go through the bare act of CrPC 125 below and try to observe and understand the important points in it. In later section, we go through it point by point and even discuss the important words carefully, but it is important that reader tries it himself first.

125. Order for maintenance of wives, children and parents.

(1) If any person leaving 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, 1975 (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 comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of

each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance from her husband under this section she is living in adultery, or if, without any sufficient reason, if 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.

# Understanding basics of CrPC 125 and implications

Laws are created in a certain milieu and 95% of the time, they will not be any different from common sense view of individuals, and norms of society. But 5% of the time, they may seem to be against common sense view or what people seems reasonable. We will now look at where CrPC 125 stands in terms of common sense/norm of society versus any unreasonable points in it.

To dissect the CrPC 125, I will produce excerpt of important words and lines from the Bare Act of CrPC 125 and give my comments after that. That approach can be used by anyone to analyse the intent of any legal provision, and it's implications. I will also note down the open questions as we go along. If you can do this exercise properly, you will be doing better than 90% of men out there facing CrPC 125 cases!

Order for maintenance of wives, children and parents.

*Intent:* maintenance of wives, children, parents. So CrPC 125 is meant not just for wives and children, but includes parents too. That reflects the Indian society (unlike western) where responsibility of parents and elderly with no income falls on the earning men of the household.

*Implications:* This can be used to advantage by asking parents to file maintenance under CrPC 125 on yourselves so as to reduce your income after paying them the maintenance. This is an advanced technique and will be discussed later.

*Questions:* 1. what is meant by the word “wives”. Yes, this is very important as we will see later.

2. What is the exact definition of “children”. Till 18 years of age? Till college education? Till they are married?

(1) If any person leaving sufficient means neglects or refuses to maintain-

*Intent:* Cast a duty on any person (so far it could be either male or female), who has sufficient means (assets or income) but neglects or refuses to maintain.

*Implications:*

1. For CrPC 125 case to be filed on someone, that person should be proven to have sufficient means. The word “means” can mean both income or financial wherewithal. So let's say I am jobless for last 6 months without any income, but I have 5 lakh of liquid assets (can be converted to cash easily), then my wife could very well claim that I have sufficient means to pay maintenance. My sense is if the lawmaker wanted to mean it to be only current income, they would have mentioned income rather than means. So that is a first warning sign that one should not be complacent and hope that merely by leaving one's job one will be able to avoid maintenance.

Whether the meaning of “means” can be extended to immovable assets like residential house, property etc, probably in specific circumstances but in most practical cases, I doubt it can be extended to immovable assets.

*Intent:* Note the usage of words “neglects” and “refuses”. The word “neglects” denote passive

carelessness of one's responsibilities. The word "refuses" denotes a neglect of duty of higher order when someone has specifically demanded that you discharge your responsibility, but you still continue to refuse to do so.

*Questions:* Does the word "person" denote only a man or can it include women too?

(a) his wife, unable to maintain herself, or

*Intent:* Meant for "wife" who is unable to maintain herself.

*Open question solved:* Does the word "person" denote only a man or can it include women too?

*Answer:* Clause 1(a) says "his wife...", and the word "his" means the intent is to cast the duty only on men, not women.

*Questions:* What exactly is meant by "unable to maintain herself"? Does it include only basic necessities of life like food, clothing, shelter or does it to be able to maintain a particular lifestyle?

(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

*Intent:* The CrPC 125 seems to be a beneficial legislation to take care of all children in society whether borne within or out of wedlock, and their responsibility is put on the biological father.

*Implications:* children are covered even if borne out of wedlock.

*Question solved:* What is the exact definition of "children". Till 18 years of age? Till college education? Till they are married?

*Answer:* Clause 1(b) clause says "minor child", so it means children up to 18 years of age which is the age of attaining majority in India, after which duty to pay maintenance to child(ren) is finished as per law. For children above 18 years of age, clause 1(c) says that father still has responsibility to maintain a son or daughter if they have any physical or mental abnormality or injury which makes them unable to maintain themselves. But the responsibility of a father under CrPC 125 ceases when a daughter gets married, and she being above 18 years of age too. So the bottom line is that as per law children above age of 18 are supposed to maintain themselves barring physical or mental abnormality or injury which prevents them from doing so.

(d) his father or mother, unable to maintain himself or herself,

*Intent:* Reflects the social norm in India that parents need to be maintained by children, nothing surprising here.

*Implications:* Either or both parents are covered too, but only if they don't have means to maintain themselves. Also, if respondent's (on whom CrPC 125 case is filed) father is able to maintain himself, then in most cases the responsibility of maintaining respondent's mother(his wife) will also shift on him. Because a father who is unable to maintain himself cannot be expected to maintain his wife (respondent's mother) since he can claim to have no means to do so. It also leads to a curious possibility that if a mother is being neglected both by her husband and by her son(s), she has the legal recourse to filing a CrPC 125 case on either her husband or on son(s), or maybe all of them together. The law doesn't seem to suggest that her first recourse lies in filing application on husband, or on son, for that matter.

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:

*Implications:*

1. The jurisdiction of CrPC 125 cases lies with Magistrate of first class (JMFC), but it should be noted that after passing of the Family Courts Act, 1984, family courts have been established in many cities. These family courts have exclusive jurisdiction to try all matrimonial cases, and they also have exclusive jurisdiction to try CrPC 125 cases as per clause 8(b) of Family Courts Act, 1984 (given in Appendix D). It means that if a family court exists in any city/town, then a CrPC 125 application can be filed only in the family courts in that city.
2. The fact about neglect or refusal to maintain has to be proven by the complainant. This only means that the wife if she files a complaint against husband, has to make some allegations like "she was thrown out of the house", "husband is abusive", "I faced violence", and so on. Without making some allegations of the above kind, if she simply files an application, it is liable to be rejected since prima-facie there is no allegation of neglect or refusal whatsoever on part of husband.
3. Maintenance amount is paid monthly. There is no provision of any lumpsum payment for next 1 year or next 2 years under CrPC 125, though in Maharashtra state's amendment to CrPC 125, there is provision to pay lumpsum for next 5 years. For most practical purposes, we can treat that maintenance under CrPC 125 will be monthly.
4. Amount of maintenance per month: There used to be maximum limit of Rs 500 and then Rs 1500 of maintenance, but after amendments to CrPC in 2001, that limit has been removed and the maintenance amount is left to discretion of the judge. It is probably not a coincidence that the number of maintenance and divorce cases started rising after the year 2000. I used to believe that the main reason was higher number of highly paid jobs being created in IT/BPO/financial/insurance sectors after year 2000. But we should not ignore that laws themselves create incentives and disincentives for people, and with the maximum limit of Rs 1500 being removed, it would become 'worthwhile' for at least some women to file and pursue a maintenance case on husband.
5. The last line says that the magistrate can direct from time to time as to whom the maintenance amount needs to be paid. It may seem superfluous because why would maintenance amount be paid to anyone else but the one who has asked for it? But I believe it to be a useful provision because it

can take care of rarer situations where for example maintenance has been asked for benefit of a disabled child who has already attained majority. In that case the child cannot take care of himself or herself, so the maintenance amount may be given to guardian who is taking care of the child. In case the maintenance has been asked by parents, the amount may be given to one parent.

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.

*Intent:* Above clause is to take care of rarer situations of child marriages.

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:

*Intent:* Above clause for interim maintenance was added later, to take care of snail pace of Indian judiciary. Basically it means that pending disposal of application for maintenance - which may take years going by typical pace of court cases in India - the judge may make an interim order to award an interim maintenance. The amount can be whatever the judge considers reasonable.

*Implications:* This means that husband facing CrPC 125 case has to first face possibility of an interim maintenance order. Given that it is an interim order and not the final disposal of case, the standard procedures in a trial like evidence and cross-examination need not and will not be followed at the same level as in a final order. So it is very important for husbands to deny vigorously the false allegations, and produce evidence and arguments which can contradict wife's claims. This is a crucial factor neglected by many with the result that they get burdened by high maintenance amount in interim order, and after that it becomes a cumbersome process to apply for revision, searching for a good/better lawyer, and so on. As I had mentioned earlier, it's very important to fight interim maintenance order with full vigour and evidences. We will cover about collecting and producing evidence in later chapter.

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

*Intent:* To ensure fast disposal of the interim maintenance order at least. Also, since complainant is assumed not to be able to maintain herself, she can demand for legal and other expenses involved in the proceedings.

### *Implications:*

1. In theory it means that husband has 2 months of time to make his own case and arguments, from the date the summons was received, till passing of interim order. In practice, it has been seen that an interim order may not be issued for 3-6 months or even 9 months or more. However, like I said before, one should not be complacent at all about interim order hoping that it may get delayed, and one should fight it fully as if one's life depends on it. Most of the time these interim orders are getting delayed only in cases where wife left husband's home a few months after marriage, and filed the cases. Everyone in the system is aware that there is a game going on, and so they take it coolly and ask both wife and husband to go through mediation drama and the like. Unfortunately, such cases are a vast majority. My guess is that if the person who filed for maintenance was a 40 year old non-working woman with 2 children to support, the courts will not drag it for 9 months etc for mediation and such things.

2. Husband/respondent can be asked to pay legal expenses (and maybe basic travel/lodging expenses etc of wife) of the proceedings to wife/complainant.

Explanation. For the purposes of this Chapter.

(a) minor means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority;

*Intent:* A clear definition of “minor child” we encountered earlier, by referring to Indian Majority Act. A minor child is less than 18 years of age.

(b) “Wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

*Intent:* It is a legislation with (highly) beneficial intents, intending that all women who got married once get taken care of throughout life. So even an ex-husband will not get off the hook as long as his ex-wife doesn't remarry. Whoever filed for divorce is irrelevant. The divorce whether awarded based on cruelty to husband, also seems irrelevant upon reading of the bare act. However, this point about whether husband can be asked to pay maintenance to a divorced wife when divorce was granted because of wife's fault; has been raised in some old judgments and there are arguments both for and against it, but mostly against it. I don't see it as a common scenario in stories we hear and so I haven't tried to go into this matter in-depth.

### *Implications:*

1. Men should be aware that even a divorced wife can claim maintenance unless she remarries, or starts to earn her own income.

2. What happens in cases of mutual consent divorces? In practical terms, most mutual consent divorces are based on an agreement where both husband and wife forego all claims on each other in future, so filing a CrPC 125 case by ex-wife after mutual divorce would be a contempt of court, and will be quashed by courts.

*Open question solved:* What is meant by the word “wives”.

*Answer:* Now we know that “wife” under CrPC 125 can mean ex-wife also, except if it was a mutual consent divorce.

(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.

*Intent:* Make a clear rule that payment whether for interim maintenance or for final order starts from date of order, in general. However, if judge orders it specifically to be from date of application, then the husband will have to pay the maintenance for previous months too from the time of filing of application by wife.

*Implication:* This is something which can turn out to be good or bad depending on one’s expectations. On the one hand, the usual expectation is that the maintenance amount will start only from date of order. With this expectation, a husband may think it is a good strategy to delay the case as much as possible. However this may backfire if the judge orders the maintenance amount as payable from date of application. The reason behind this rule may also be that in case the delay is because of the applicant wife, then the husband should not be kept on tenterhooks wondering about his total liability including previous months’ arrears when the order is made. In general, it is not considered a good practice in lawmaking to make someone liable of a liability calculated on a retrospective basis.

(3) If any Person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month’s allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case 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:

*Intent:* Clause (3) denotes the reason why this law is part of Code of criminal procedure, even though it is beneficial legislation meant to prevent destitution. Basically, the judge has power to put husband in jail for 1 month or till the payment is made. So this clause is what makes it a quasi-criminal legislation.

*Implication:*

1. If one does not pay maintenance, one may be served a fine levy warrant to recover the amount by selling off one’s moveable or other property. Issue of fine levy warrants (FLW) is not so rare. I will explain about fine levy warrant in separate section.

2. Fine levy warrant cannot be issued after 1 year delay, and also an application has to be made by complainant to court for its issuance. So 1 year is the period of limitation. It doesn't happen automatically.

3. Husband/respondent may face jail term up to 1 month upon non-payment of maintenance. Now in practice, jailing of husbands is very rare. But the provision exists nevertheless, and that is why we are going through the bare act step by step to understand where the law stands exactly. My interpretation based on plain reading seems that there should be maximum one month of jail for a breach of order, and not for every month of pending payment. This is because the wording clearly says that the process of warrant starts only upon making of an application by complainant wife, and even specifies a limitation period of 1 year from date of default. If the intent was to punish with 1 month jail for every 1 month's default, then the law could have said the same with simple wordings to the effect. However in one very rare case, the Mumbai high court had upheld 44 months of jail term for 44 months of default in payment.

<http://menrightsindia.net/2010/01/1-month-jail-for-every-month-of.html>

I will discuss about this aspect in more detail later. Above case also denotes the faulty logic behind what many think of adopting as a strategy that "I don't want to pay any maintenance to wife, so I will not pay and let's see what happens". Usually this is not really a strategy but avoidance of reality and escapism. Living in a country, we are bound by its laws, and sooner or later the law will catch up and whatever pain that had been postponed may get inflicted upon us with interest! It is much better to fight from the very beginning if you feel you are in the right.

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

*Intent:* This clause prevents a wife from taking advantage of her own wrong, in the sense that she cannot live separately without a good reason, and then claim maintenance alleging that husband is not taking care of her.

*Implications:*

1. In theory, husband should be able to avoid maintenance under CrPC 125 because in most false cases, wife will not have any real evidence to backup her allegations. In practice, it is not that straightforward. The final order in CrPC 125 may come after a long time, usually 2 years at minimum. In the interim, the judge may award some maintenance to wife which is based little more on the fact that judge sees lot of allegations in the complaint/petition, and he/she decides that something has to be given to wife because CrPC 125 is a beneficial legislation. The point here is that it was a beneficial legislation meant to help those who are deserving beneficiaries, not all applicants! This *ask-for-maintenance-get-something-regime* is not what CrPC 125 was meant to be, but fortunately or unfortunately we are living in an age of supposed women empowerment, and

all things are getting re-interpreted with those eyes.

2. The point about husband having another wife or a mistress is quite reasonable. For this reason, be prepared if one of the false allegations is that you are having an affair, or you have a girlfriend, or something of that kind. Wife is trying to get an easy approval from the court of her own action of not staying with husband. You have to deny it forcefully and ask her to give strict evidence in support of her allegation.

4) No wife shall be entitled to receive an allowance from her husband under this section she is living in adultery, or if, without any sufficient reason, if 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.

#### *Intent:*

1. Clause (4) and (5) try to put conditions under which wife can be denied maintenance. In earlier clause, husband having another mistress or wife was considered a just cause for wife to live separately and still claim maintenance. In clause (4) and (5), similar restriction is put on wife that she can't claim maintenance if she is living in adultery. This is quite reasonable too.

2. Cancellation of existing maintenance order can be done only after giving sufficient proof to judge that wife is living in adultery, or she has refused to live with husband without any good reason.

#### *Implications:*

1. Now we come to one of most interesting points, which will be problematic for all those men who suspect or even have proof that wife has a boyfriend. The clauses (4) and (5) restrict maintenance to woman "living" in adultery, which is an ongoing scenario. Let's take the situation of a woman who has "lived" in adultery in the past, but who is not living in adultery at present. She can very well claim to court that it was a past event and she is entitled to maintenance from husband because she is not "living in adultery" anymore. Also most likely she will allege some cruelty done by husband which forced her, albeit temporarily, into the arms of another man!

2. Such a situation may not be that far fetched. I have actually seen such a woman making her 'prayer' in family court standing in the witness box. Almost 30 years ago she had been caught red-handed about her extra-marital affair, with evidence produced of her letters written to boyfriend, and so on. But there she was after a gap of 30 years filing and explaining her claim to maintenance from husband! Many people in the court were unable to contain their laughter listening to her story, but that's how it is. Welcome to the 5% of the time when law doesn't seem reasonable or against common sense, but that's how it is! The beneficial legislation wants to protect women no matter what 'mistakes' or 'adventures' they had in the past, and the duty invariably falls on the husband married to such woman! Sometimes the reasoning given in support of such legislation is that the woman may be living in adultery not because of her fault to start with, but as a result and consequence of husband's fault. So there you have it! I wonder what all an adulterous husband can claim in court from his wife!

# **What happens if husband doesn't pay maintenance?**

I would in general advise anyone against the strategy of not paying maintenance and waiting to see what happens. It may be fine only in case to case basis where for some reason the court passed an order of maintenance much higher than one's income. But keeping this option as main strategy is not advisable since as per law, the maintenance amount will keep on accumulating, and one day that amount in arrears will have to be paid lumpsum.

Also, many men feel righteous about the fact that wife has left with no reason at all and the allegations are false. So they think that they will not pay the ordered maintenance in interim order, and will appeal against it. The problem is that even when the matter comes up for appeal or revision, the courts will always insist on paying at least part of the pending arrears amount, say 50%, before the appeal can be taken up. So to get benefit of lower maintenance after appeal, you have to pay up the ordered maintenance amounts In arrears, at least partially.

Is this kind of negotiation before taking up husband's appeal exactly within the parameters of legal process? I am not 100% sure, but my general sense is that this has become an accepted process within the courts, so it's more in the realm of 'tradition' than law. Usually husband's own lawyer will know about the impending problem very well, but he/she may not warn him in time. Advocates also operate from different perspective, and probably they think that convincing the husband may not work anyway. So they wait for the day when appeal comes up for hearing and that's when husband gets to know the 'news' that he has to clear up pending dues before his application will be taken up! That's how the system works. But as far as I know, I don't think this is an accepted position in law. If such a provision was allowed, an unjust order could be made and one will have to pay up first before his appeal against an unjust order will get heard. That will subvert easily the process of justice, and can lead to lot of corruption in judiciary too.

## **Fine levy warrant if husband doesn't pay maintenance**

Previously, we had seen during analysis of CrPC 125 bare act that a fine levy warrant can be issued against husband if there is a maintenance order and he does not pay. It is reproduced again below:

(3) If any Person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case 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:

The process followed by courts to recover dues from husband is given as per CrPC Section 421 which details the process to recover dues from an offender.

421. Warrant for levy of fine.

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take 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, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter: 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 realise 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.

Basically, the important points are as follows:

1. Even if husband doesn't have income, his movable property is liable to be attached and sold to recover the maintenance dues. This could mean your car or motorcycle could be taken away and sold to pay off maintenance. I have seen one case where husband had a FLW issued against him, but even for him it didn't come to this that his stuff was taken away by anyone. He kept on paying small amounts of maintenance every month whatever he could afford as per his income and expenses, and that's the stand he took in front of judge.

2. Clause 1(b) doesn't preclude the possibility of husband's imprisonment because CrPC 125 says that person can be jailed for 1 month for not paying maintenance. But again, such situations have not been seen in real life cases, so to discuss them in gory detail will not serve much purpose. If I do come across fine levy warrant cases, I will surely update this section based on the new findings.

3. Clause (3) says that a Collector has power to recover the dues, but even then the collector does not have power to get the person arrested or order his detention in prison for the purpose of execution of the warrant.

## Format of warrant in case one doesn't pay maintenance

In case you don't pay maintenance for many months, a warrant may be issued against you. The prescribed format of the warrant is given in second schedule of CrPC as given below:

From CrPC Schedule 2 - The Second Schedule

Form 19. Warrant to enforce the payment of maintenance by Attachment and Sale

To ... (name and designation of the Police Officer or other person to execute the warrant).

WHEREAS an order has been duly made requiring ... (name) to allow to his said wife (or child or father or mother) for maintenance the monthly sum of rupees ... and whereas the said ... (name) in wilful disregard of the said order has failed to pay rupees ..., being the amount of the allowance for the month (or months) of ...

This is to authorise and require you to attach any movable property belonging to the said ... (name) which may be found within the district of ... and of within ... (state the number of days or hours allowed) next after such attachment the said sum shall not be paid (or forthwith), to sell the movable property attached, or so much thereof what you have done under it, immediately upon its execution.

Dated, this ... day of ..., 20 ...

(Seal of the Court)

(Signature)

Having gone through CrPC 125 and its various clauses, now we have some basic understanding of how and why maintenance may get awarded. With regards to amount of maintenance that may be awarded, we haven't discussed in detail yet. We will cover it in later chapters including giving references to judgments.

# **Ch 5. Understanding sections of DV Act (PWDVA) and implications**

# What is PWDVA (Protection of Women from Domestic Violence Act)

PWDVA (Protection of Women from Domestic Violence Act) was passed by parliament in Sep, 2005 and was notified by official gazette in Oct, 2006. Commonly it is referred to as DV Act, so we will use the terms DV Act or PWDVA to mean the same thing.

Unlike CrPC 125, the DV Act is very long and has 37 sections in it. One should read the chapter on CrPC 125 first before moving onto DV Act. Apart from that, one may also want to read the DV Rules (rules define the process and procedures for an Act) in Appendix C to get a full understanding of the procedures which will be followed. For example, take a scenario that you have received a phone call from a woman who claims to be from women's welfare organisation, and they say that a DV case has been filed against you. Do you start to worry and start asking them questions about where to do and where to come, or do you first ask them whether they have any authority to call people over the phone? Answers to such questions can be found by reading the DV rules.

Reading the full text of DV Act or DV Rules only out of curiosity or for sake of learning is not everyone's cup of tea. Having said that, reading at least the important sections of DV Act are a must if you have a DV case filed on you. Firstly, let's read the Statement of Objects and Reasons behind passing this law which are given as preface to the DV Act itself. These give an easier understanding of the intentions behind passing such a law. Once we know the intent of the law, it becomes easier to read and understand the specific sections as applicable to each case.

*Note: in subsequent discussion and comments on PWDVA, the term "wife" is mostly used to denote the complainant. Legally, even a live-in female partner of a man can claim to be an aggrieved person under DV Act because it covers both wife and live-in female partner of a man. Practically speaking we only see DV cases filed by wife on husband, so to keep things simple I have used the terms wife and aggrieved person/complainant as synonymous in all the places.*

# Statement of Objects and Reasons of DV Act with commentary

Below I give the verbatim portions of statement of objects and reasons of DV Act, interspersed with my summary comments, with sarcasm and hopefully some wit.

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:-

Prefatory Note-Statement of Objects and Reasons.-Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

Para 1-3 create the ground for why we need to pass DV Act. Domestic violence is widely prevalent, let's throw in names of United Nations and some of its committees and initiatives to keep in awe anyone who dares to ask questions, invoke some articles of the constitution for good effect, mention that IPC 498A exists but civil law is lacking in protecting women, hope that the 'patriarchal' but truly speaking white-knight male parliamentarians are every ready to support any legislation which will protect women in society, and Voila!, we have an easy recipe to pass a new law to protect women. So now friends, we we proceed to pass the act as below.

4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

There you have it, we started off saying violence against women is widely prevalent, invoked name of United Nations, and in the first para of the law itself excluded the mother/sisters of husband to be able to file complaint against wife or female partner. The exact intent of this law is already becoming clear: make a civil version of IPC 498A. It's only for wives people, not all women!

(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

Unlawful dowry demands were covered in Dowry Prohibition Act, 1961, then in IPC 498A in 1983, and now in 2005 we need to cover it once again in this civil version of 498A.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

Woman comes, woman stays, you (and your parents) may get thrown out. That's the law!

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

Practically speaking, husband and his relatives can get restrained both in physical movements but also in terms of their property/assets.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

Above is what I choose to term as the domestic violence industry. Give incentives and salaries to meet some target quotas of DV complaints, and then act surprised why false DV complaints are rising!

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.

Did anyone miss an important point in the Statement of Objects and Reasons of the DV Act? It talks about protecting women (wives) from violence, protection order, residence order, protection officers, service provides etc; but doesn't mention anything about a maintenance order!

So how is it possible that the most important provision of DV Act used against husbands, the maintenance order, is missing from the Statement of Objects and Reasons?

It is intentional people. The fact is that most of the lawmakers don't actually read the whole bill before voting on it in parliament. If they barely go through the Statement of Objects and Reasons before pressing the Yes/No button, that will be an achievement in itself. And for that very reason any mention of maintenance or monetary orders is completely absent from Statement of Objects and Reasons. We don't want to raise any alarm or cause for concern among lawmakers before they vote – let the male lawmakers feel happy they did their white-knight's role well in protecting the *abla-naaris* (weak-women) of India. They may not even be aware what they have passed into legislation!

## How is a DV case different from CrPC 125?

As we have discussed briefly, the Statement of Objects and Reasons at beginning of DV Act mentions about protecting women/wives from violence in homes, allowing them to file complaints against both male partner/husband and his relatives, mentions right to residence for women, and mentions about protection officers and NGOs as service providers.

It doesn't mention about maintenance at all. So why do people who receive a summons in a DV case are asked to pay maintenance to wife, and amounts asked are like 1 lakh per month when husband's salary may not be more than 40,000 per month? Because all those clauses about maintenance are part of the actual sections of DV Act which we haven't gone through yet. But these have NOT been mentioned in the statement of objects and reasons, but are the most often used weapons by the domestic violence and divorce industry against husbands and their parents. It is a convenient way to hide the real intention of the law which gives one more channel to women to seek maintenance, hiding behind allegations of domestic violence. Most of the lawmakers do not actually read the full text of proposed bill, and if they had gone through the statement of objects and reasons, they would assume it's about protecting women from domestic violence and ensuring shelter to abla-naaris (helpless women), so it must be all for good. With more celebrities facing DV cases and huge maintenance demands that go with them, hopefully the general public will wake up to the reality too that the DV act is just a convenient way to ask for huge maintenance and luxuries. Or maybe the general public will still keep sleeping, because each person learns from their own experience rather than from others'.

CrPC 125 doesn't mention domestic violence specifically, it just says that if a woman stays away from husband and she can prove it is on just grounds, then she can be entitled to maintenance. The whole idea behind CrPC 125 was to prevent destitution of women and children who may be abandoned by husbands or in-laws. It did not go into fine details like verbal abuse, economic abuse, and so on. The DV Act on the other hand is an aggressive tool for unscrupulous women, to make false domestic violence allegations and then demand high maintenance amounts. I don't have exact statistics but my gut feel based on calls received is that more CrPC 125 cases are being filed in smaller towns, but DV cases are the weapons of choice in big cities. The reason could be simply that the 'knowledge' about these advanced weapons hasn't yet percolated down to the advocates in smaller towns. Or it could be that the advocates there suggest to file a CrPC 125 case, because suggesting stronger cases like DV Act, will probably lead to stronger allegations and divorce faster; and the advocates feel it's too mercenary an approach even if it gets them the legal fees. I am not trying to exonerate the role of advocates in spreading the 'knowledge', but we cannot blame them as the root cause either because the root cause are the feminist/matriarchal families which encourage their daughters to file cases on in-laws.

So bottom line is that if you are facing only CrPC 125 case from wife without very strong DV allegations, then your wife/in-laws are taking a slow approach trying to test the waters at each stage. If they file a DV Act complaint however with strong allegations like "husband is violent, impotent, abused me sexually, has girlfriend etc", then expect a more vigorous approach from the opposite party. There is no guarantee ever that they may not file 498A later, but CrPC 125 case usually means they want to beat you with a wooden stick covered with cloth; and DV case usually means they want to beat with an iron rod. Intention is the same, the difference is only in degree.

## Section 2. Important terms in PWDVA - let's learn the basics

Similar to how we discussed CrPC 125, I will list its important sections (not all) which are often used to extort maintenance, harass men, and their families. This will be of help in preparing for how to handle the DV cases filed by wife. The full DV Act is given in Appendix B as a reference.

From Definitions Section of PWDVA, I produce below selected sections, followed by my comments on how it may be important for you.

2 (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;

*Comment:* Your wife is the “aggrieved person”, aggrieved because of the alleged domestic violence.

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

Also, a domestic incident report or DIR needs to be filed which will contain precise details about the details of violence committed. Since it mentions prescribed form for DIR, that format of DIR is given in the DV Rules. It's in PDF format with tables so can't be included in the appendix. But a direct link to download is given below:

[PWDVA Rules, 2006](#)

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:

*Comment:* You will be termed as the respondent. Usually the terms petitioner (one filing petition) and respondent (on whom the petition is filed) are used in civil cases. PWDVA is a mostly civil law with provision for arrest and punishment in jail only for violation of protection order. I haven't though heard of single case about someone being accused of violating the protection order and being jailed for that. Anyway we will visit that later.

2 (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;

*Comment:* DV cases have to be tried in magistrate courts (criminal) and cannot be tried in family courts unlike CrPC 125 cases which are a must to be tried in family courts wherever they exist as per Family Courts Act, 1984.

(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;

*Comment:* Unlike CrPC 125, DV Act gives lot of possibilities to claim not just maintenance amount, but compensation etc of various kinds based on domestic violence claimed. It's very important to deny forcefully all allegations of domestic violence and give counter-allegations if any of wife's unreasonable departure with no good reason, and her false case threats, suicide threats, domestic violence on you/your parents, whichever are applicable in your case.

(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;

*Comment:* Protection order basically means an order on respondent not to commit domestic violence. A protection officer is a government officer (can be police officer) whose responsibilities are defined under the DV Act and DV Rules.

(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:

*Comment:* This is an important point. Usually the DV complaint is filed against the husband and a domestic relationship anyway exists between them. But sometimes the woman may try to file it on husband's brother or father too. In case the husband's brother or father do not stay with him and the wife, then the fact of domestic relationship of brother or father with the complainant can itself be challenged.

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

*Comment:* Basically refers to the NGO and other entities given authority to help domestic violence victims.

(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.

*Comment:* Shared household is a very important concept, because a complainant wife can claim residence inside the shared household under the relief of residence order. Immediately after coming into operation of DV Act in Oct, 2006, Supreme Court had to pass a judgment in [Dec, 2006 in Batra versus Batra case to clarify that shared household](#) will not include house of husband’s parents where the wife may have stayed for a few days only. It is very common in Delhi especially that women will try to occupy the in-laws’ residence even if husband doesn’t stay there. There is absolutely no right given to wife under DV Act to claim in-laws’ house as her residing place under DV Act unless that was her usual or permanent residence. One just has to fight back against such tactics by wives.

## Section 3. What can be alleged to be domestic violence?

The definition of what constitutes domestic violence is given in Sec 3 of DV Act and is a very wide and exhaustive definition, easily liable to misuse. The section 3 of DV Act is given below.

1. If your wife has not yet filed a DV case, read it to see what allegations she has been making verbally so far, that she might file later under section 3.
2. If your wife has already a DV case, read the section 3 below to check what parts of the section have already been used in allegations against you.
3. Bonus exercise: Read the [PWDVA Rules, 2006](#) Form I (of DIR) and Form 4 to check what specific allegations of domestic violence have been made against you from those checklists.

### 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.

The main point to keep in mind is that the definition of domestic violence in section 3 is very loose and relaxed, and practically any kind of verbal or written communication can be construed to be an incident of domestic violence should the wife choose to make it so!

I will instead provide examples from real life situations which can be twisted to suit a domestic violence allegation.

1. Wife is harassing husband daily and husband gets fed up. He thinks that if he takes a separate house all by himself without telling wife, and then stops paying rent of their current place, the wife will get harassed. Be careful, it can backfire easily! Because wife can allege “economic abuse” under 3(iv)(c) which can easily include the fact of husband not paying rent as economic abuse on wife because it deprives her of “resources and facilities she is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household”.

2. Wife very often comes back late from work, and the reason doesn’t seem to be because of her late work hours but her personal reasons. Husband questions her on and off about it. It can be complained by wife to be harming her mental well-being or emotional abuse under 3(a).

But usually, when women file complaints, they will add some *masala* (spice) to the complaint, for example “My husband suspected me of having an affair whereas I used to come back late because of work at office”.

In next section, we consider a simple approach to fight domestic violence allegations.

# A simple approach to fight DV allegations

The saving grace in Section 3 of PWDVA is that it's final clause says that the events have to be seen in their totality to decide whether domestic violence has taken place or not.

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.

Above should be used by husbands during arguments to tear apart the often vague, contradictory, without-evidence allegations of wives. How? Let's say your wife has made 10 different allegations of domestic violence some of them like the following:

1. I was not given food in marital home.
2. I was forced to leave the house on DDMMYYYY date.
3. Husband is having an affair.
4. And so on...

...

10. Contents of allegation 10 ...

Allegation 1 to be proven true has to have some medical evidence of malnutrition etc, which is never provided. Regarding allegation 3, many women just put it to support their reason of leaving husband's house, but without any evidence, so it's a mere allegation. Let's say that a wife has shown some proof like a train ticket that she left the husband's house on certain date as in allegation 2.

Now if husband can argue that 9 out of 10 allegations to be without any evidence, he is already in strong position. To counter the one about leaving husband's house, he can say that wife left according to her own accord without any coercion or domestic violence done to her. The allegation 2 is actually combination of 2 statements:

1. I was forced to leave the house
2. I left the house

Now you can argue that only the second statement is true, the first isn't and wife doesn't have an iota of evidence to support the first allegation either since her other 9 allegations which could have shown that she was forced to leave the house, have fallen flat.

So husband can argue easily that the totality of allegations and evidence suggests that wife was under no force or threat to leave but she left the house out of her own free will.

It is very important to take this approach to fight DV cases, because many a time it is seen that husband's own lawyer doesn't give him support and instead may create fear or doubt in husband's mind about the outcome. Show these advocates this section and ask them how can the judge decide that domestic violence has taken place when 9 out of 10 allegations haven't been proven at all? Impress upon the court that totality of the allegations and evidences do not suggest a probability of domestic violence having taken place. In fact, the totality of evidence on record suggests that the allegations are bogus, baseless, and malicious with sole purpose to harass the husband, and claim

maintenance.

## **Section 5. Can a woman who has filed DV case later file 498A too?**

Yes. Of course. DV Act is created to give some civil benefits to wife, and IPC 498A was the criminal section added to IPC in 1983 and now used mainly to torture husbands and his family members. The real life use of IPC 498A is to drag husband and family into criminal cases. The real life use of DV Act is to make false domestic violence allegations and claim both compensation, and monthly maintenance based on those allegations.

Section 3 b) outlines usage of DV Act to file complaint for dowry harassment too.

3 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

In fact, the DV Act says that it is duty of magistrate, service provider etc to inform the aggrieved person:

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

## **Section 9, 10. What to do if a women's NGO calls you about DV complaint against you?**

Section 9 of PWDVA defines duties of protection officers to be: to make DIR (domestic incidence report) and send it to magistrate, to get her medically examined, and so on. You can read the details in Section 9 of PWDVA given in Appendix B.

Section 10 of DV Act also allows some of these duties to be performed by any NGO which has registered with the state government as a service provider under DV Act.

They also have some of the duties and powers given to protection officers, for example to make DIR, to get complainant medically examined etc. However, they don't have authority to call up the respondent in a DV complaint. So you can ask them to not bother you over the phone but tell them that you are willing to cooperate fully with court procedures and any written summons etc. One can stop needless worrying about when the next phone call will come, by taking this simple approach based on sound knowledge of law.

## Section 12. How complaint under DV Act is filed and time for disposal

Section 12 is about Application to Magistrate. 12 (1) gives the process how a DV complaint to a magistrate is set in motion:

(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.

*Comment:* The act says that magistrate is bound to take a DIR into consideration received by him. In case the DIR of your wife's case contains allegations that are vague, unsubstantiated, or can be proven false by your evidence, you must insist upon judge through your advocate that DIR cannot be ignored while passing order for any reliefs asked for in the application.

Section 12(4) and 12(5) provide for prescribed time limits for first hearing and disposing of the application:

(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.

In practice, the disposing of the application may take even more than 2 years, based on practical cases seen on the ground. Disposing of application means not just interim maintenance order but disposing of the whole case.

## Section 13. Notice to respondent

Section 13 of DV Act which deals with service of notice is reproduced below:

### 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.

The process for summons under CrPC 125 and DV Act will have some similar points, so the details of the process are covered in next chapter about summons and procedures. Next section gives the format of notice sent to respondent in a DV case. The notice will cover the basic details including in which court and on what date do you need to appear. It should not be taken lightly to ignore the summons, since the judge has power to proceed and grant an ex-parte order of relief to wife if you don't appear. You can send your advocate if you cannot appear yourselves on first hearing for any reasons, and pray for more time.

NOTICE FOR APPEARANCE UNDER SECTION 13(1) OF THE PWDVA

FORM VII

[ See Rule 11 (1) ]

NOTICE FOR APPEARANCE UNDER SECTION 13(1) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 IN THE COURT OF .....

P/S:.....

IN THE MATTER OF:

Ms.....Complainant VERSUS Mr.....Respondent To, Mr..... S/o..... R/o.....

Whereas the petitioner has filed an application (s) under section..... the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

You are hereby directed to appear before this Court on the..... of.....20.....at..... O'clock in the.....noon personally or through a duly authorized counsel of this Court to show cause why the relief(s) claimed by the Applicant against you should not be granted, failing which the court shall proceed ex parte against you.

Given under my hand and the seal of the Court of..... day of.....20.....

Signature

Seal of the Court

## Section 14. Counselling under DV Act for wife and husband

Section 14 outlines the provision for counselling of wife and husband either singly or jointly.

### 14. Counseling.-

(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 counseling 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.

It is not any kind of psychological counselling, or counselling of your wife to learn how to live with husband, or counselling of your wife to stop making false allegations and ruining married life.

Counselling sessions are basically a disguised way of putting pressure on husband to make him understand that his wife holds all the cards, so unless he begins to dance to her tunes, his life can be made miserable at anytime merely by his wife raising her finger. The whole idea behind these counselling sessions is ostensibly to get the couple back together. However unlike a real marital counselling based on understanding the psychology and communication between the couple, these counselling sessions under DV Act are of no use since one party to the issue, the wife, has already decided that she intends to use the law to the fullest extent to subjugate the husband. Invoking the law in a marital dispute means things are heading for a break up of relationship, and the remaining questions to then decide upon are: who gets how much, and who has the financial obligations.

## Section 16. Proceedings in private if requested

In case you feel that there are certain allegations made by wife you want to defend vigorously but only in front of judge and opposite party, then you can request the proceedings to be done in camera, which means in private, and no public or other advocates are allowed in the courtroom during the proceedings.

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.

Note: *in camera* does not mean that the proceedings will be recorded in camera. It is a common misunderstanding. [Read wikipedia article about in camera proceedings.](#)

## Section 17. Right to reside in shared household

Section 17 gives wife right to stay in a shared household.

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.

*Comment:* The shared household is a very important concept as mentioned earlier too, and SC has given multiple judgments where it has said clearly that shared household cannot be taken to mean any place where wife stayed for a few days, for example at husbands' parents house. See judgments below:

Any house where husband and wife stayed for a few days would not become a shared household.

[Shared household Batra vs Batra - SC 2006](#)

Delhi HC denies right to reside in father-in-law's house.

[Wife not entitled to stay in father-in-law's house - Delhi HC 2014](#)

Above Delhi HC judgment upheld by SC too.

[Wife not entitled to stay in father-in-law's house - SC 2015](#)

In practice it is seen that most women who file DV complaint are more concerned with the maintenance amount per month since they go by the adage that "cash is king". However, if your wife wants to harass you or for any other reason, she can actually claim to get residence in the house you are living in - whether own or rented - and can also ask for a separate room of her own which she will be permitted to keep under lock if she wants to. You going into that area of house can be construed as violation of protection order should your wife choose to complain (see Section 18 for protection orders).

## Section 18. Protection orders - Honey, I won't hurt you again!

Section 18 is about protection orders. A protection order can be passed by magistrate against you and it is basically a restraining order since it prohibits the respondent from both physical proximity, violent acts, and even communication with the aggrieved person. I thought it important enough to reproduce in full below because many a time in India people don't understand or don't care to read the full text of the law, thinking probably that it's a husband-wife relationship, so things will not be taken so seriously. But that easy-going attitude can land one in trouble if one is unaware.

### 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.

*Comment:* The key thing is that protection order cannot be passed against you ex-parte (before you haven't appeared in court), so magistrate has to hear your side of story before passing any protection order. I believe the opportunity given to respondent will be a reasonable opportunity, but the judge will not wait beyond multiple hearings if the husband chooses not to appear in court.

Also, if protection order is issued, one should not communicate with wife as given in 18(d) except while inside open court, during court appointed mediation, counselling sessions etc. when an official is present. Because otherwise it can be construed as violation of protection order if the wife chooses to make a complaint. Violation of protection order is covered in Section 31 and can lead to a jail term too, though on the ground we (MRAs) haven't seen any such case so far.

## Section 19. Residence order - wife comes, wife stays, you go out

Section 19 deals with Residence order and every husband should be aware of its implications. Especially if you don't have any legal cases yet but you are expecting something to happen, you should decide on your strategy whether living in own house or rented house. Clause 19(1) is given below:

### 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 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.

*Comment:* Note that again a residence order can be passed only after magistrate is satisfied that domestic violence has taken place. So you should defend against DV allegations vigorously and make this clear to your lawyer right from the time you engage him/her.

Residence order is applicable on shared household which was discussed before. Respondent can be asked to leave the house too, and many a time the husbands would have already left the house fearing more serious cases like IPC 498A if they continue to stay in the same house with a threatening wife inside.

Sub-section 19(1)(b) means that husband's female relatives staying in same house like his mother or sister cannot be asked to leave the shared household.

Sub-section 19(1)(c) can be invoked to make sure a separate room /bathroom etc is given to wife for her exclusive use and you or your parents cannot use those portions of the house.

Sub-section 19(1)(d) can be applicable to cases where the husband owns the house either singly or jointly with the wife. The court can pass an order that the house cannot be sold, rented to someone else, etc by husband.

According to 19(1)(f), it is not necessary that a wife may ask to live in the shared household. She may very well stay at another accommodation and ask for husband to pay rent for that accommodation.

That accommodation should be of the same status as the shared household.

# **I am fearing DV case, should I sell my house?**

Having gone through section 19, we are in a position to discuss what strategies or tactics can be adopted to minimize the damage if you don't have a case filed on you yet.

If you own your own house, whether fully paid off or bank EMI still ongoing, you will be sometimes advised that it is better to sell-off the house so that your wife cannot claim residence in it or put a restraining order using Section 19 of DV Act. Of course lawyers don't dish out this type of advice, it's usually discussed in men's rights forums.

The decision to sell the house or not will depend on several factors:

1. If husband and wife are still staying together in the house which is solely in husband's name, then she can get a residence order under section 19 to stay in the house. In fact she can get husband to leave the house too based on domestic violence allegations – whether true or not, the order depends on how well you dispute the allegations and what the judge finally orders. So a husband may be deprived of own house for which he might still be paying EMI, as is common in most cases. The cases may drag on for many years, during which time the husband pays EMI, and also pays rent for his separate accommodation. So in a way this adds to the husband's financial burden because he may be ordered to pay maintenance amount separately. Of course on flip side, husband should use this as argument to reduce the maintenance claiming that wife doesn't need any money for rent since she is staying in husband's own house.
2. The real-estate and housing market prices move in cycles (go up mostly) due to their own industry dynamics, interest rates cycle, state of economy, job creation etc. If one bought the house at relative peak of housing cycle and then few years later is fearing wife will file DV case, but if the housing market is depressed at that time, one may get no return or maybe even a loss on invested funds by selling at that time. Also, the cost of stamp duty and registration are charges which are quite high in India (vary from state to state), so buying and selling houses is not something which can be done every few years because the transaction costs will be quite a high proportion of the overall consideration.
3. On the other hand one could be in a relatively lucky situation to have invested at relative trough of the housing market, but few years later one finds oneself in a situation of fearing DV cases from wife. But at that time his house price has appreciated maybe 30-50%. In that scenario, one may very well make a decision to worry less about what one is losing in transaction costs but more about saving the invested principal in house from wife's clutches should she get a residence order or a restraining order on the house.
4. In some situations, the wife is acting crazy on you but both of you are still staying in the same house. In that situation, selling the house will be almost impossible since any purchaser would like to see the house at least and it will be difficult to do so when wife is living in the same house.
5. If however wife has already left for her parents' house and living apart from you, then selling the house may become a real possibility since you can show the prospective buyers the place easily in her absence.

So the decision to sell the house or not is really best taken based on analyzing and weighing carefully the above factors. Ultimately it's a person's own understanding of the situation combined with his confident action that can save the day. Whatever decision you end up making, don't regret the decision based on how the events actually unfolded in future. In a situation of uncertainty, there is no

way of knowing beforehand what is the optimal decision. There are only probabilities involved. So one should carefully think about various probabilities, decide on one approach one is comfortable with, and then stick with it.

## **Should I transfer house to my mother's name?**

This is another question in the minds of those who have a self-acquired house and fear that upon filing DV case by wife, the house will become encumbered due to possibility of restraining order or residence order in favour of wife.

As far as legality goes, it may be perfectly legal to transfer your house to your mother's name. The cost of stamp duty etc on a transfer deed is also much lesser than on a sale deed, so you can save on taxes paid to government vis-a-vis on sale of house.

However, one caveat one has to bear in mind is that we have seen a few scenarios where the mother may put her own pressure on the son after the house gets transferred in her name. Human relationships are delicate, and though it is a good idea to try to save a property going to an unscrupulous wife, sometimes the end result that is being seen is the husband starts to get pressure from his own mother who tries to run her son's life according to what she thinks is best for him.

If one feels that there could be unnecessary entanglements later if house gets transferred to mother's name, then selling the house maybe given higher weightage in decision making.

## Section 20. Monetary reliefs -It's all about Money, Honey!

Now we come to the section which is music to the ears of feminist wives and the divorce industry lawyers.

### 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 is 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

Comments: Sub-section 12(1) basically refers to the application by wife to magistrate to get one or more reliefs possible under PWDVA. Under sub-sections (a)-(c), wife can claim various kind of monetary compensations which are SEPARATE from the monthly maintenance.

(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.

*Comment:* Above is the most important clause of PWDVA which enables a woman to ask for monthly maintenance from husband. It is drafted very favourably to women seeking relief, since it allows the possibility of a maintenance order either under CrPC 125, or in addition to CrPC 125 order, or any other law in force which means any other maintenance awarded under HMA 24 too! Which means that in theory a woman can file a CrPC 125 case first, and follow up with DV case later asking for maintenance in both! Or she may be getting maintenance already under Section 24 of Hindu Marriage Act (HMA 24), and yet file a DV case seeking maintenance under it too.

To reiterate, the compensation asked in sub-section (a)-(c) is separate from monthly maintenance.

In practice too, it is seen that a few women file both CrPC 125 and DV case on husbands with a gap of few months in between, and ask for maintenance under both. Logically and legally speaking, law should not permit award of relief on same grounds multiple times. However the drafting has been done cleverly assuming the judges will take it to be a beneficial legislation and be kind enough to award maintenance in DV case even if maintenance under separate CrPC 125 case is already awarded. In practice, it is seen that sometimes women are able to get a maintenance award under both. The husband can request the court to take into account the fact that already sufficient maintenance has been awarded to the wife. There are few judgments against this kind of practice, for example, the below Delhi HC judgment by justice S N Dhingra which dismissed maintenance under PWDVA when CrPC 125 maintenance was already awarded.

## Multiple maintenance under DV Act denied when CrPC 125 already decided

Extract from above judgment is given below:

If a woman living separate from her husband had already filed a suit claiming maintenance and after adjudication maintenance has been determined by a competent court either in Civil Suit or by Court of MM in an application under Section 125 Cr.P.C. she does not have a right to claim additional maintenance under the Act.

The basic point to argue on is that if wife has won maintenance order in one case, and files another one to claim additional maintenance, then you should deny this new maintenance based on the fact that she is already well-maintained due to your paying her based on a previous maintenance order of another court. I think this is a point of law which is either unknown to many advocates, or who are just plain lazy and don't want to delve into intricacies of the law and various judgments. The only reason for a judge to award a maintenance amount when it is already ordered in another court is when the judge thinks the previous maintenance amount is not sufficient. You have to impress upon the judge to do a careful look at wife's submissions regarding her expenses and needs, rather than passing a summary order granting maintenance.

(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.

*Comment:* Sub-section (2) above gives magistrate the power to award such amount of maintenance which would make wife's standard of living similar to when she had left the husband's house. This is somewhat similar to case law followed in awarding maintenance under Hindu Marriage Act also. We will discuss an advanced technique in next section about how a "DV House" can be used to lower such maintenance.

Sub-section (3) makes it possible for judge to give a lumpsum maintenance too, whereas under CrPC 125 only monthly maintenance is allowed (barring state amendments). In practice, we don't hear award of lumpsum maintenance though.

(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.

*Comment:* Sub-section 20(6) above give magistrate the power to direct husband's employer to directly debit portion of his salary and deposit it towards his maintenance obligation. It's one more reason it's not a good idea for husbands to not fight the maintenance case well, but think that one will not pay and see what happens. The possibility of a court order being given to employer is not a good idea to keep a professional and responsible image. But hang on! It doesn't mean leaving one's job is a good idea. That's about the worst possible idea to avoid problems due to maintenance and other cases, as we discuss later.

# **Want to save maintenance? Invite your wife to “DV House”**

For men whose wife has left them but hasn't yet filed any cases, there is an advanced technique discussed sometimes when a few men go into a huddle or sit around a table discussing their life and situation.

The concept is called “DV House”. What it means is quite simple. Since the maintenance amount ordered will be to enable a wife to have same living standard when she was with husband, why not be pro-active and lower your standard of living so as to lower future possible maintenance amount!

So if your wife has left you, and even though there is some talk of her coming back going on, you are aware of her intentions and a real possibility of a future DV or even CrPC 125 case being filed upon you. If you were living in a Rs 20,000 rented apartment when wife had left you, then she may very well claim her right to a similar standard of living in her application. She may then demand for a similar house, or rent amount for a similar house, under her DV or CrPC 125 complaint.

It's not going to be a pretty outcome. Paying huge rent to wife for her pleasure of living separately!

So what is suggested sometimes is for the man to take up a rather small house/apartment on rent, and start living there. Let's call this place as “DV House”. As and when the DV case is filed, or just plain discussions with wife are going on about her coming back, invite her to this new “DV House” to rejoin you in matrimonial life. Usually wives want to come back to try and file a proper case next time they leave you finally and for good, in case the first time they made some mistakes or didn't have enough evidence to back their allegations. Now if she indeed comes back, even if she files a case, her maintenance amount will be based on the standard of living in the “DV House” and not based on your Rs 20,000 per month rented house of earlier era. If she doesn't come back, usually she would have lost time and wouldn't have any good allegations to make a successful case against you. In both situations, you win and the cost is merely living in relative inconvenience for a few months. As the time progresses and if the wife doesn't file any complaint, her future possible application will become quite weak in eyes of law due to long passage of time between reported domestic violence and the time she had last stayed with you. So you can always shift to a more comfortable accommodation in future when you are confident that her plans have been successfully thwarted!

## **Other benefits of “DV House”**

**Saving rent on house:** Let's say you are living in a house with Rs 20,000 per month rent. Wife leaves you. She tries to complain to police or maybe files a CrPC 125 case. A few months back she wants to come back. You take her back in the home. Two months later, she files a DV case on you and gets a protection order and a residence order on the house. Now you have to leave the house (fearing violation of protection order), find another place on rent, and she can continue to stay in the house while you pay Rs 20,000 per month rent for her exclusive use of the house!

If instead you had taken a DV house at 5,000 rent per month and invited her back there instead, your loss will be limited to a Rs 5,000 per month only. But more likely, the whole game will change once she realizes that you are calling her to another, much smaller house, so things will not even go the original route she had thought of.

## Section 21. Custody Orders

### 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.

*Comment:* This sub-section is another example why men's rights activists demand about creating a men's welfare ministry or a national commission for men. Not that things will change immediately upon creating such a commission or ministry. But when lawmakers create a law like DV Act the whole purpose of which is to specify what reliefs can be given to the woman, rather than what would constitute overall justice for children, father, mother; the results are clauses like above.

Under personal laws and Guardians and Wards Act related to child custody and guardianship, the basic premise is that decisions about custody and guardianship are to be taken with sole consideration being welfare of the child(ren), and not of the parents. But with clauses like above embedded into a law considered solely about 'protecting' women, it is foregone conclusion that fathers can hope to get a reasonable visitation order under DV Act.

So the bottom line is that it is a waste of time asking for visitation orders under DV Act. Even though section 21 says about possibility of child visitation, it is merely an addendum to the main point which is that the mother can get temporary custody of children if she asks so. The latter clause of "*Magistrate may refuse to allow such visit*" is also cleverly put into the draft so that the judges can be relieved of their conscience by keeping this as a possible doubt and hence not awarding visitation to father under this section.

## **Section 22. Compensation Orders - Or how I became a rich woman claiming domestic violence!**

### **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.

*Comment:* If one wants to find which law has as many multiple reliefs as possible, then DV Act will surely get that award! In Section 20, we saw sub-sections (a)-(c) which allow for monetary reliefs to woman for loss of earnings, medical expenses, and damage etc to property. Now the drafters of the law didn't find it wise to maybe add one more subsection to the same Section 20 to include compensation for mental harassment. No! There had to be a separate section for compensation for mental torture and emotional distress. After all, the judges might not give it that much importance if it was just a sub-section, so let's make it into a section of its own!

So Section 20 (a)-(c) were for the physical and tangible injuries, and Section 21 is to take care of those nebulous, intangible things like mental torture, emotional distress etc, which can miraculously disappear once the awarded compensation is good enough.

In real life cases, women have been found to ask anywhere 2 lakh to 5 lakh compensation amounts or even more. Even an amount of crore has been heard. This will of course be in addition to maintenance amount asked which may be anywhere from 50,000 p.m. or more. So always expect a compensation amount demand which a multiple of monthly maintenance demanded.

## Section 23. Interim and Ex-parte orders

### 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.

*Comment:* Sub-section (1) allows judge to pass interim order for any of the reliefs like protection order, residence order, monetary relief, compensation order etc. Which means that before the trial is done and evidence/cross-exam done of both parties, judge may pass interim reliefs based little more than allegations made and who argues more in the court room. Which is why it is very important to prepare the lawyer to forcefully deny the allegations in court room, and you should also be prepared to verbally argue and state faults and misdeeds of wife in the open court when case is being heard by judge.

**Meaning of Ex Parte:** where a court proceeding is heard in the presence of one party only and without notice to the other party(s)

The next sub-section is a bit worrisome for husbands since it allows the judge to grant an ex-parte order simply based on affidavit filed by wife. Again, the ex-parte order can be for a protection order, residence order, monetary relief, child custody order, compensation order; or any combination of these.

How it can be used against husband? Getting a temporary child custody order by wife based on merely allegations is quite easy, as I have experienced in my own case. For the others, usually the judges may not pass them without giving the husband a chance to appear and file objections. But the possibility shouldn't be dismissed either because in rare cases it has been heard from husbands that judge in their case was insisting on passing an ex-parte order AFTER the husband had appeared in court and filed objections! One can't help but think that the judge wants to act like he is the law!

## Section 24. Order copies

### 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.

*Comment:* Basically, certified copies of the order can be claimed by both wife/husband free of cost, and the police officer of the area, and any women's NGO involved in filing of the DV case being acting as a service provider under DV Act.

## Section 25. Duration and alteration of orders

### 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.

*Comment:* This is an important section of the act, because it mentions how orders can be modified in a DV case.

For modification of a protection order under Section 18, aggrieved person/wife has to apply.

For modification of other orders (including protection order), either wife or husband can apply. Since the protection order is mentioned separately, the intention is that it is given special importance and a husband will not be able to get protection order removed unless he files for alteration of other orders too. Since sub-section 25(2) allows for either wife or husband to apply for alteration of any order (which can include protection order, if any), there was no need for sub-section 25(1) if the intention was that even respondent/husband can apply for its discharge independently of other orders.

Bottom line? Expect this section to be used as a negotiation tool by the opposite party and advocate. Want a relief in protection order? How about shelling out more maintenance? Don't go that route, there are better ways to fight.

Also, this section can and should be used by husbands to get justice. For example, let's say at the time of interim maintenance order, the wife had claimed that she was not working, and she got an interim maintenance order based on that submission. Now maybe after 4-6 months you are able to get some evidence of her working status or income, then you can use this section to get the interim maintenance order altered and maintenance reduced or made zero depending on the income of wife. Whether she was working at the time of filing her application or whether she joined work after interim maintenance order, in both cases your grounds to reduce the maintenance are strong. Of course, if you can prove that she lied to court about her working status at time of filing of application, it will be much stronger argument in your favour that she approached the courts with unclean hands. A perjury application under CrPC 340 may also be in order, but that is left to advanced fighters and the course of action will vary from case to case.

## Section 26. Same relief can be got in other proceedings too

### 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.

*Comment:* Continuing in line of making DV Act the final act to be used by women, this section says that a wife can file a complaint in any other court whether before or after filing the petition under DV Act. There is no bar on her claiming relief under other cases filed in various other courts.

For example DV Act can be used by wife to get temporary custody of child(ren) under section 21. She can file a GWC case also in family court to get permanent guardianship and custody of children, and DV Act will not bar her from doing so.

However a woman cannot file a complaint in family court under Section 12 of PWDVA, since family courts have no jurisdiction to try PWDVA complaints. Following judgment of Chattisgarh high court disallowed filing of an application under Section 12 of PWDVA in family court.

[Neetu Singh vs Sunil Singh - Chattisgarh HC 2007](#)

### Important parts of judgment

9. In view of the above scheme of the Act, specially as per the provisions of Section 26 of the Act, the appellant herein is entitled to seek relief available to her under Sections 18, 19, 20, 21 and 22 of the Act, 2005 in the maintenance proceeding pending in the Family Court, Bilaspur. But the appellant is required to move an application under Section 26 read with Section in which she is seeking relief. However, instead of doing that, the appellant moved an independent fresh application under Section 12 of the Act, 2005 which can be entertained only by the Magistrate having jurisdiction. An application under Section 12 cannot be filed before Family Court because proceeding under Section 12 of the Act, 2005, as per the scheme of the Act, has to be filed before the Magistrate competent to entertain the application.

Also, we had discussed earlier about sub-section 20(d), where a wife can claim maintenance under DV Act irrespective of maintenance already ordered under CrPC 125 or HMA 24. We also covered ground on how to deny her additional maintenance. In similar manner, this section extends that benefit to other reliefs also. However, to my knowledge, other laws like Hindu Marriage Act or CrPC 125 do not provide for reliefs like protection orders (section 18) or compensation orders (section 22) etc to women. If it may happen in particular case, it maybe under inherent powers of the court and not

because the law specifically states such a relief under those other laws.

Sub-section 26(3) gives an important point to be followed by wife, that she has to inform magistrate in case she already has gotten similar relief in another court's order. For example it is commonly seen that women who have got a maintenance order under CrPC 125 or HMA 24, will later file a DV case and ask for maintenance there too. Make sure to read her petition carefully and if it doesn't mention the fact of existing relief she has gotten already, make it a strong objection point in your written statement. The whole point of this is to not abuse the process of law, and waste resources and time of the courts, where a person gets a relief and still keeps adding to the litigation by asking for same reliefs in another forum. This could also lead to grant of multiple relief on same cause of action, which is a clear abuse of the law and process of justice.

## Section 27. Jurisdiction

### 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 this Act shall be enforceable throughout India.

*Comment:* DV Act again is very favourable to women, and is cleverly worded to include even possibility of filing a case where a woman has temporary residence. Sometimes people report that wife has filed a case from so and so place but she doesn't live there actually. She may have a relative in that city and for whatever reasons she has filed case from that city to harass the husband.

Fortunately, there is Delhi high court judgment which has addressed this 'flexible' wording in the act, and has struck down on the meaning of temporary residence to mean flexibly any kind of temporary visiting place by the woman.

It was argued that in view of the judgment of this Court in Sarat Kumar Pandey Vs. Mamta Pandey (2010) IV AD (Cre) DHC 565, the court of MM would have no jurisdiction to entertain the application since the applicant had hired a room in the hotel only for the purpose of invoking jurisdiction of Delhi Court.

So if your wife has filed a case from a city where she doesn't reside normally, you can file an objection based on lack of jurisdiction and get it dismissed. She may still be allowed to file it from her usual place of residence, but you will have one additional evidence to produce to whichever court she files in later, that her intention is more about harassing you than about claiming relief from alleged domestic violence.

## Section 28. Procedure of trial

### Section 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.

*Comment:* So the PWDVA is part-civil in nature in the sense that it's all about granting money and compensation and not necessarily jailing the respondent (except upon violation of protection order which hasn't been heard so far). On the other hand, the procedures and processes to be followed for maintenance order are by referring to CrPC 125, and this section extends it to overall CrPC too.

However, it gives freedom to magistrate to lay down own procedure in case of sub-section 23(2) which is for grant of ex-parte order.

Below is link to a very important judgment of Karnataka high court which must be used by all to make a submission to magistrate that a summary trial must be done to go through the allegations of domestic violence etc, before passing an interim order or final order. This is applicable to all cases where summons have already been issues to respondent.

[Interim relief under DV Act cannot be granted without conducting inquiry as per CrPC summons case - Karnataka HC](#)

Note that above is applicable even for interim orders including interim maintenance order.

## Section 29. Appeal

### 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.

*Comment:* Respondent can file appeal within 30 days of getting order to sessions court. In general, the advice is to fight the cases well right from the start and don't place hope on appeals and such things. Appeals waste both your time and expenses on lawyer, and if you are unable to win in the lower court because of lack of evidence in your favour, merely appealing is not going to be of much use.

Of course, if the maintenance order is unjustifiably high, or the judge has ignored your good evidences in your opinion, then making an appeal may make sense.

## Section 31. Jail term up to 1 year on violation of protection order

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 Magistrates 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.

*Comment:* After discussing all the reliefs which can possibly be given to woman, and the procedures behind them; the law now comes to the important business of how and when to punish the guy in the case, that's you! It makes a jail term up to 1 year possible under this act.

The bottom line. If you have a protection order passed against you, read it carefully. Also read the comments on section 18 - protection order given earlier. Section 18 is very clear that respondent should not communicate with the aggrieved person, so for all readers who insist upon making WhatsApp, telephonic, Facebook chat, or other communication with wife for any reasons whether emotional or spiritual, they are taking a risk!

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.

Section 32 says that the violation of protection order will be treated as cognizable and non-bailable. Which means it is exactly similar to IPC 498A. Before the Arnesh Kumar judgment of Jul 2014 by Supreme Court came into force, police used to arrest without warrant in IPC 498A because it was cognizable. After that judgment, police has started issuing notices under CrPC 41, 41A as the procedure demands instead of arresting blindly after FIR. So at least it's not as big a threat as before.

(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.

Above clause is a testimony to the 'success' of feminism in vitiating the standard procedures and norms of justice in most countries. If you have a protection order issued against you, then wife's testimony that you violated the order is enough to convict you under section 31, and ensure some time

in jail. Bye bye to any evidence you may have in your favour!

For example, what would happen if your wife said that you came to her house on so and so date and broke the windows of the house, but you have very good evidence with you to prove that you were in a city 300 km away on the date and time mentioned. Will the court still go by the sole testimony? The court can if it wants to because it says “*the court may conclude*”. There is no condition put on the judge to call you for hearing and take your evidence, which is against the principles of natural justice. Thanks to broad public support by men to women empowerment, now some of these same men will have to pay for that collective karma!

## Section 36. Other laws still apply

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.

*Comment:* This basically means that provisions of DV Act cannot override any other law in force. As we saw earlier, it is clearly given in various provisions of DV Act that a woman can claim both maintenance and other reliefs under DV Act even if she has similar reliefs ordered under other laws. So the importance of this provision is that it makes the DV Act as mainly a tool to get reliefs for a woman. For substantial and permanent reliefs like getting an actual decree of divorce based on alleged cruelty by husband, or getting permanent custody of child, etc; a woman will have to file a complaint under the personal laws. So DV Act is a nice Swiss army knife made for women to get quick reliefs, while they keep open the possibility of using bigger legal weapons in future using the existing personal/family laws.

## 37. DV Rules

This section is about the process, procedures, and various actors (protection officer, service provider) who carry out the provisions of the DV Act before it reaches the magistrate, format of various forms like DIR (domestic incidence report), and also help with enforcing of the protection order.

The full section is given below for completeness. The DV Rules are given in Appendix C so one can refer to them for details about the procedures to be followed in filing of DIR etc.

### 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 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.

# **Ch 6. Proceedings and summons in CrPC 125, DV Act**

# Sequence of steps in court in CrPC 125 or DV Act

Following are the general steps taken in a case under CrPC 125 or DV Act.

1. Application filed in front of magistrate court (DV Act) or family court (CrPC 125). When wife files DV or CrPC 125 case, she is the applicant.
2. Summons are sent to respondent/you.
3. You/your lawyer appear at first hearing and lawyer files vakalatnama which authorizes him to represent you.
4. Possible that judge may sent the parties to mediation. It is more likely to happen if one or both parties ask for mediation.
5. Mediation fails or whatever else happens there, but case is not withdrawn by wife.
6. Written statement, or commonly called objection to be filed by respondent/you.
7. Framing of issues
8. Trial starts. Evidence by wife and her witnesses, then cross-exam of witnesses by respondent's/your lawyer.
9. Evidence by respondent/you, then your cross exam by opponent lawyer.
10. Arguments by both lawyers.
11. Order/Judgment.
12. Appeal/Revision etc in same or higher court if any party challenges the order.

Interim orders for maintenance or other reliefs, will be done usually within first 2 steps. Of course, it is entirely possible to file an interim application (IA) at any point of time to change an existing interim order, or pass a new interim order, and it may get taken up if considered priority by the judge.

# **CrPC 125 proceedings are quasi-civil and quasi-criminal**

CrPC 125 is part of code of criminal procedure, and the intent of putting it in criminal code was that to prevent destitution of women/children/parents abandoned by a man responsible for them. If he didn't pay the ordered maintenance, he could be put in jail if that was what needed to be done to put some fear of law in minds of people. But for all other purposes, it is like a civil law since there is no provision for punishment if one is paying the ordered maintenance regularly. An excerpt from judgment below captures it quite well.

<http://indiankanoon.org/doc/868189/>

5. At the outset, I have to state that a proceeding under Section 125 Cr.P.C. is quasi civil and quasi criminal. In so far as it decides the civil rights of the parties to claim maintenance, it is civil in nature. When the order is not obeyed by the person against whom the same has been made, then the court is empowered to impose a punishment of imprisonment of one month for each breach. To that extent, the proceeding is criminal. To put it comprehensively, I have to state that the proceeding is quasi civil and quasi criminal.

# Procedure for Summons in CrPC 125 case

Sections 61 and onwards in CrPC (Code of Criminal Procedure) lay down procedure for summons. Since CrPC 125 can result in punishment of 1 month for every breach, the procedure for CrPC 125 is taken as per a summons case (as opposed to a warrant case for serious crimes).

The form of summons is given in Sec 61 of CrPC.

## Section 61 - Form of summons

Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

The format of summons received in CrPC 125 case will be according to summons form in Schedule 2 of CrPC:

### Form 1. Summons to an Accused Person

To ... (name of accused) of ... (address)

WHEREAS your attendance is necessary to answer to a charge of ... (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of ... on the ... day of ... Herein fail not.

Dated, this ... day of ..., 20 ...

(Seal of Court)

(Signature)

Section 62 of CrPC covers the process how summons will be served on you if wife has filed CrPC 125 complaint.

## Section 62 - Summons how served

Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

So a summons can be served by police officer or an officer of the court, and you have to sign it to

denote your acceptance of the summons. Collect your copy of summons and appear on the mentioned date in court.

So now you know that if you get a call from someone claiming to be from a women's NGO, that is not a summons from court. You can very well ask them politely to send you a written letter about whatever they have to say to you about your wife's complaint, and you will take it from there.

## **Can summons be delivered at your office address?**

I have heard from some men complaining that wife had got the summons sent to their office address, and they felt bad about it because it will create a bad impression in office. Someone even asked whether he can file defamation on wife based on that.

The first question to ask is that whether the summons can be sent to office address? The CrPC doesn't say anything about which address the summons has to be sent to. The legality seems to be that summons is meant for a person, not for an address. As long as it is sent to a home or work address of the person, I think it's all fair game as far as law is concerned.

# What will happen if you don't take summons?

Many men who get a summons from court for the first time in CrPC 125 or DV case return the summons thinking that it will be taken as not delivered. Sometimes, they are at work when the summons server comes, and it is either returned back or even taken by a family member. Is it considered served or not? The CrPC has well-defined procedures laid out to take care of such situations. One should not jump to some conclusion about whether summons has been received or not, without reading the relevant provisions below.

Section 64 of CrPC lays down the procedure when the person for whom summons is intended cannot be found.

## Section 64 - Service when persons summoned cannot be found

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Explanation - A servant is not a member of the family within the meaning of this section.

So delivering summons to an adult family member is same as delivering to you.

# **Summons delivery if you are not found at the address**

Section 65 of CrPC lays down this procedure.

## **Section 65 - Procedure when service cannot be effected as before provided**

If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

Now the first part of Section 65 says that duplicate copy of summons can be pasted at maybe outside wall or door of your home if you are not found. The second part says that court may declare summons to be duly served or order fresh service of summons, after making inquiries which are left to discretion of the court. To be on the safe side, one should not assume that court will order for fresh delivery of the summons. There is a danger that an interim maintenance order may be made against you ex-parte if you keep hoping that summons will be sent again to you!

# What happens in court in first hearing?

Assuming you don't have any case filed by either you or wife so far. Then the moment you gets the summons for either CrPC 125 or a DV case, things have gone legal, war has been declared, and so you can start preparing on how to fight the cases right then. Or some of you may have already been prepared thanks to reading this book! (patting myself on the back).

Some of the readers may go into a state of shock or disbelief thinking like:

1. *"She had said we will go for mutual divorce and that she doesn't want anything from me. What's all this about 50,000 maintenance per month and 5 lakh compensation?"*
2. *"I am sure she is under bad advice from her cousin."*
3. *"She is nice. It's only her parents who are influencing her."*
4. *"I will not give her a penny. She will realize her mistake then and will come back."*
5. *"I will meet a lawyer and discuss if I can file a divorce case. She will then learn a lesson."*

Gentlemen, some of the above may have some value in terms of how valid these statements are in terms of expressing your feelings and emotions, and help in letting a bit of it out of the system. But others like in 2 and 3 are more like escaping from both immediate reality and possibly what's coming up in future. If someone is really nice, do they express that niceness by filing false cases on someone else?

It's time to get prepared about how to find a lawyer, brief him about your strategy and approach, and then watch him either closely or not so closely depending on how much trust you are able to develop over time. Dilly dallying and wishful thinking is not going to help.

In the next chapter, I cover the points on how to find and manager a lawyer. For the purpose of attending the first hearing, it's really simple. The process of law has reached your door, and now as a citizen it's your duty to cooperate with the legal process and put your own story and evidence across so that ends of justice will be met in the end.

## What will not happen in court in first hearing

People go with high hopes that they will be able to share their "Mann ki Baat" in front of judge, explain that the whole case is false, that they are carrying a clinching evidence in their bag which once put forth in front of the court, it will be disprove the whole case. Unfortunately, the system of justice works in a very systematic way, where there is no scope for any shortcuts no matter how good the evidence you may have with you. All the evidence and arguments that you may have with you will have to wait till the right time comes.

## What needs to be done in first hearing

Engage a lawyer, pay him some basic fees to start with maybe 5K-10K or depending on your needs/negotiation skills and lawyer's needs/negotiation skills. Lawyer will file a vakalatnama in court to represent you as your advocate and do all pleadings and arguments on your behalf.

[A sample vakalatnama in PDF form is given here](#), which is actually more detailed than the ones I have seen before, and seems even more favourable to advocate, in terms of mentioning 3 years timeline of case, and so on. Anyway, rest assured that the vakalatnama cannot absolve lawyer from

his professional responsibilities. There are bar council rules and Advocates Act which prescribe standards and norms all advocates have to abide by. Otherwise, in theory at least, even their license to practice can be cancelled.

## **What does not need to be done in first hearing**

Trying to engage with the opposite party/wife about showing her what a mistake she is making, or getting all charged up and emotional and losing cool in the open court. Courts are the places where cold, unemotional people win and the emotional ones may vent some anger or frustration, but that will not help anyone get results from process of law.

## **Likely things which may happen in first hearing**

1. Judge may refer both parties for mediation, and set the next date by when mediation (which usually go for multiple sessions) should be finished and mediator's report sent back to the judge.
2. Judge will ask you/your lawyer and you will get the next date by when you have to file the objections/written statement to wife's application
3. The opponent lawyer will do drama in front of court alleging your cruelty, and how judge should immediately award them some interim maintenance, and so on

So now you know everything what to expect at first hearing!

# How to file objections to wife's application?

The standard thing that needs to be done when husbands get summons from court in maintenance/DV case is to file objections. Ok, many a time the case may be sent for mediation, especially if one of the parties strongly expresses desire of rejoining the spouse in matrimonial home. Below is a simple way how to write the objections for each statement in wife's petition. It is always advised to write your own and send it to advocate for review, before taking a print and filing in court.

The standard application/petition by wives is like below:

In the XYZ court between

Maharani DV-498A Petitioner

vs

‘Victim’-of-false-cases Respondent

1. I got married on XYZ date in ABC place etc.
2. I was not given food
3. I was beaten up
4. Husband is impotent
5. I was sexually abused
6. I was burnt with cigarettes
7. blah blah blah

In the end, her petition says: “I should be given 50,000 p.m maintenance, legal costs, compensation, blah blah blah .”

So your objection /written statement should be like this:

1. Admitted the fact of marriage of petitioner and respondent on XYZ date in ABC place. (if the fact of marriage and date/place are true)
2. Petitioner's allegation that “I was not given food” is denied and she is put to strict proof of the same. Or maybe better to use third person format like: Petitioner's allegation that she was not given food is denied and she is put to strict proof of the same.
3. Petitioner's allegation that she was beaten up is denied and she is put to strict proof of the same.

Similarly take each para/point in petition and if something is true, you can accept that and whatever is false you can deny in same format as above.

You must add some of your own points, story, or allegations if you will, from your own written story (covered later in Chapter 8). Later on the same can become part of your evidence/affidavit. This is because if wife makes even false allegations but we don't even state the actual domestic violence at hands of wife what happened; then a presumption may arise in mind of judges that the one who makes

allegations might have at least 20% truth in those allegations, but the one who simply denies but has no counter-allegations to make might be the culprit. It's a psychological game so one should not be seen to be coming under any pressure. Alternatively, to take a logical perspective of human psychology behind it: Trying only to defend may not be the right defence. Many lawyers will suggest in beginning to focus only on denial and defending (to steer later towards a compromise/settlement basically), but I tend to disagree because if the cases actually go to evidence and full trial, not having made any allegations in the objection statement may create some disadvantage.

In the end, state that "for the reasons mentioned above, petitioner's petition should be dismissed with exemplary costs, in the interest of justice and equity".

During the objections, one need not give any evidence. But I would not be very strict about "don't disclose any evidence till trial" policy advocated by many. It's not a purely legal game, it's also a psychological game, so if one can create some fear in opponent's minds at the very beginning of the cases by disclosing some tactical evidence; they may feel the same fear and uncertainty that they want you to feel about what's going to happen next. If you can make them believe that you have better evidence with you that's yet to come, this will put them under pressure.

# **Ch 7. How to find and manage a lawyer**

# **Should you expect an advocate to be like a doctor?**

Many people are under the impression that an advocate is a professional just like a doctor, and they trust that they will get the same good advice as they get from a doctor.

Nothing could be more endangering to results in your legal cases than believing in this lawyer-would-be-like-a-doctor stuff. But people have actually told me this even after NOT getting good service from their advocate.

Also, there are many more men who are searching for good, honest, professional lawyer to handle their cases since they are dissatisfied with their existing lawyer.

There are also many who have changed few lawyers already over the years in the hope that the new lawyer will give them better results but that doesn't seem to be happening.

If you have been searching for a good lawyer, and unable to find any, maybe it's time to check whether the blame lies with lawyer alone, or with your own unrealistic expectations? But first I want to cover one point which I think goes seriously against lawyers as a professional group.

## **Do advocates act like they believe in law?**

On this point, the Indian advocates really leave the corrupt/black sheep of other professions far, far behind! While we can face issues from individuals in other professions, it is unique culture of Indian advocates that they indulge from time to time in collective disruption, strike, violence be it in cities of Bangalore, Ghaziabad, Meerut or Chennai. Usually every 6 months or so there is one such news. Just a quick google search can give you sample of news items of such incidents, and usually there is always something happening every 3-6 months.

Advocates who are supposed to uphold the law themselves don't show any faith in law and its procedures when they have a grievance of any kind. They indulge in violence, destruction of public property, and so on.

So when advocates as a group indulge in violence and disruption of civic life, does it give you confidence that they can be treated at par with doctors when it comes to professionalism and duty towards clients?

# How to find a ‘good’ lawyer

I have mentioned the word ‘good’ in quotes, because the legal profession in India works in strange ways. Maybe it’s because the judiciary itself not very responsive to public’s needs, and that frustration tends to percolate down into the whole system.

In support of my assertion, here is an email of a person who wanted to know answer to a simple question, and he had asked this question to 4 lawyers:

*Can someone confirm what is the timelimit to appeal Family court’s (Nyaya Degula) HMA24 order in highcourt?*

Different lawyers are giving different opinions - one said 30 days from date of order, another said 30 days from date of receiving certified order copy, another said 90 days and another one said 1 year.

So when 4 lawyers give different answers to a question which should be a simple matter of checking up a manual like Code of Civil Procedure, and should be an automatic thing for any practising advocate, what chance do we have of finding a ‘good’ and ‘professional’ lawyer? I rest my case stating that if this person had trust on his own lawyer, he wouldn’t have needed to ask 3 others!

I will leave this question open without giving my own view on it, so it can probably achieve the effect what only a Zen story can, and move on to the practical aspect of how to find a lawyer to handle your DV or CrPC 125 case.

A lawyer representing a husband (that’s you) in a matrimony related case in India will be only as good depending on how much of the following you have done.

## Basic homework, preparing by reading laws, important judgments

How good a homework you have done in reading up basic laws of CrPC 125, DV Act, 498a arrest/acquittal rates, and doing homework to understand how the divorce industry works. Many people fail to do this very basic task because they expect their advocate or some men’s rights activists to do these things and just provide them with ready to digest formulas or pills which can take away the persistent headache and deliver peace! It is no wonder that the kind of formulas suggested by lawyers like send legal notice to wife, file Section 9/RCR, file divorce get them into bigger soup like DV, 498a, divorce cases filed by wife which they are totally unprepared to handle. Instead of a quick solution, they get long term cases to handle.

## Having realistic expectations

Do you have realistic expectations and not living in a fantasy land. I quote just 2 of the real life examples where the lawyer has promised a fantasy and the client has bought it all.

Father of husband facing 498a soon: *“The advocate said that he can get my son divorce within 1 year”*.

Husband having 498a case already: *“My advocate said that if we go to high court, I can fix your situation within 3 months”*.

Believing any of the above statements is in similar category of ‘investing’ money with someone who promises to double it within 6 months. Falling for “divorce within one year” lies in the same category. Even in 21st century when people have access to latest information on their finger tips, people fall for things like email prize scams, Nigerian scams and what not. There’s a saying: “there’s a sucker born every minute”. Do you want to be that sucker?

## **Taking a clear stand on your matrimonial problems**

Have you taken a stand or a strategy about how you want to handle your case? To give an example of what could be just the opposite of taking a stand, I give summary of an email from a ‘victim’ facing multiple cases of divorce, 498A etc. He has himself listed these 4 options under consideration, which I have edited to make it easier to read.

*OPTION 1: File perjury even before the cross. He hopes that perjury will be considered and will it help me avoid alimony.*

OPTION 2: Take ex-parte divorce, but that would leave alimony and 498A cases running.

OPTION 3: Don’t do anything, Just keep taking dates.

OPTION 4: Take stay from HC, stating that he wants marriage to continue.

Can anyone point out the contradictions and inconsistencies in above points? Talking about divorce in point 2, and about taking back wife in point 4! Option 1 seems to suggest he has something up his sleeve and wants to file perjury against wife, but option 3 seems to suggest he doesn’t even know what to do!

Many people who complain about lawyer messing up the case, actually fall into category of the person above. They themselves have confusion in their mind, but instead of acknowledging it and then addressing it, they tend to jump from one technique to another. One day they are thinking about filing divorce on wife to put pressure on her, and next day they would be thinking about taking wife back so it may save them maintenance. With that kind of approach, a lawyer will not know exactly what you want yourselves, and so it is quite likely he may take you for the ride and collect some fees, till the time you get frustrated from him and switch to another lawyer!

## **Are you in touch with other men facing similar issues?**

This may be considered an optional step, but barring a few self-starter folks, for most others it may be necessary at least in the beginning 1-1.5 years of the cases.

Do you want to know how good or bad your lawyer is working out for you? Basically this is about creating a feedback loop. To know this is only possible by interacting with other men facing same issues, which will let you know what to expect and if your lawyer is doing something other than usual. But that is such a no-no for many people who are hell bent on proving innocence (I call it The Innocence Project) because they believe that proving innocence is the desirable goal, when the law already says that one is innocent until proven guilty. Mostly they are cracking up in the very initial stages of their cases itself because they will fall for a trap called solution-within-1-year-or-6-months by a quick-fixer-lawyer and when that doesn’t happen, they don’t have any other option to fall back

upon. The real reason seems to be that people expect that they haven't done anything wrong, so somehow they should be able to get rid of all cases, and get their divorce. Sorry brother, there are millions of other Indians standing patiently in front of you in that queue, in our courts. Getting faster justice for you would be putting your case ahead of someone else's, and that is not how things work.

If you have considered all of the above points and gave them the focus they need, finding a lawyer is as simple as talking to a few of them and going with one who seems to understand your strategy/plan and is willing to execute it that way. Also make sure that he/she is ok with the communication and other administrative aspects as given in next section about managing and communication with lawyer.

# **Setting expectations, Managing your advocate, handling communication**

## **Set realistic expectations from lawyer**

Following are sample of unrealistic expectations:

1. Lawyer can speed up my case. If you just read the newspaper you will find there are cases running for decades altogether in India. Only fast track cases can finish within 2-3 years, and that's for criminal cases. There are no fast track courts for civil cases.
2. Thinking of lawyer as a solution provider or advisor: Think of advocate more as a helper and at best a partner. How professionally a lawyer will work in your case may depend entirely on your own preparedness, clear directions, and communication with him/her. I gave example earlier how a person got 4 different answers from 4 different lawyer to a relatively simple question about legal procedure. In general, the advocate community gives the impression that they cannot be trusted fully and client should be watchful about what they are doing for him.

## **Approach to take with lawyer**

You can decide to be the car driver, and let him/her be the navigator. People do the opposite letting lawyer doing the driving and then they wonder why he doesn't do what they tell him to do! If the lawyer didn't advise us on who to marry and how to run our married life, why the hell he should he/she be advising us on what to do if our married life has run into problems? Whether you should file RCR, divorce (both not recommended in most cases), or just wait and watch; should be your choice, not based on advocate's advice. They can execute on what you want them to do, but don't let them take control of the steering wheel.

Many people won't be able to digest the above. Let me give another example. If I am an insurance salesman, then it is in my interest if you buy insurance from me, then would you expect me to give you advice against buying insurance? When even doctors are found prescribing unnecessary tests which serve no value to patient, why do you expect an advocate to prescribe just the right things and nothing more than the right things?

## **Young lawyer or old?**

Some people say that if you hire an older lawyer, he/she may have the experience, but he/she may disappear from the scene after initial few hearings, and his juniors will take over. They will be taking adjournments while you want the case to run faster. He won't be available for your case since he has so many other things to handle. On the other hand, he has juniors available for managing routine work and routine hearings, so you won't have to guess whether your lawyer will skip today or when is he/she going to come back from his/her other court hearing.

Younger lawyers have the advantage that they are more available and don't have a vast practice or other junior advocates to manage. He/she will himself be available for discussing things himself for important things like drafting an IA (interim application). But they may lack experience and that maybe an important factor if you think your case is complex. Hint: if you don't know whether your case is complex, most likely it's not.

My own thinking is that very young lawyers nearer to 25 years of age maybe a risk unless they give some confidence that they have handled matrimonial and maintenance cases. Someone above 40-45 maybe unavailable if he has other lawyers to manage. So depending on your own needs and preferences, choose between various available options.

## **Setting fees**

Fees varies from city to city. In a relatively high-income city like Bangalore where people have more income but less time, legal fees will be more than say in Nagpur.

One Bangalore person informed me that his lawyer was charging Rs 1,000 per hearing in DV case. He also said that his lawyer knew about his relatively high income.

Another person recently said that his lawyer told him that he expects to get Rs 3-4,000 per hearing. This person has relatively simpler family court case.

I mention the above cases only to suggest what not to fall into. Here are my thoughts on the issue of fees:

1. The best point about legal fees was something I read in Advocates Act. It said that a lawyer is supposed to charge a fees which is commensurate with his experience level in his practice, and other lawyers at same standing. If you read the Advocates Act and bar council rules etc, it would seem that practice of law is a highly noble, and selfless profession the aim of which is service to clients, and not expect rewards, and definitely not act in a greedy manner. Also, lawyers are supposed to be part of a brotherhood, about which point I couldn't agree more. They all join together in breaking things and violent protests on the street when the need arises!
2. In general, I think that paying anything more than 5-10K at a stretch to a lawyer should probably only be done AFTER one has some confidence in that lawyer having engaged him for a while. The confidence can be both ways too. I know of cases where lawyer took some money initially and didn't take anything until the cases were closed, at which time the full settlement was done.
3. The fees should be based on progress of case from one stage to another, for example from written statement to evidence, from evidence to cross-exam and so on. That will remove the problem of paying fees per hearing if the hearing is simply resulting in adjournment for no fault of yours. If you have more than one case with same lawyer, then the fees will increase. If 2 cases are running together in the same court, then the fees may increase but not necessarily be double since both cases get heard on same dates.

## **Best practices of engaging with lawyer**

Draft your own petitions, your own objections, your own IAs. All of these can be done by advocate and in fact most laymen hire lawyers to do mainly these things, since they think of petitions and applications to be of special nature needing professional expertise. It is simply not so. Barring the legal header and footer/signature, the matter of any petition or application is basically statements of facts as you know them, followed by your prayer to court asking for specific reliefs. I have done it in all my cases and in consumer court cases too, with good results. Also, any advocate never knows the facts and evidences as well as you know them yourselves, so you will be at advantage if you write them yourselves, and use lawyer's help to review and polish them if required. I am amazed when I read copy-paste petitions made by wives' lawyers, with no grammar and no flow of thoughts,

haphazard sequence of events, and probably it's intentional because their lawyers also know the case doesn't have merits, so why spend time putting polish on an ugly case. Basically the wives' lawyers are taking them for a ride, the wives just don't know it yet. They are all hoping that filing petition, combined with mediation, and a dose of women empowerment will save the day for them! It's not that simple.

I always prepare my own drafts and expect lawyer only to correct/review and take a print and submit in court. Sending the drafts by email is quite productive so one doesn't have to travel to advocate's office just for that purpose. For that reason, I think it's better not to engage with a lawyer who doesn't use email much. I know of one person who engaged with an advocate who still used to make him run around with him in the court complex trying to find a typist to type the petition, and such things. In today's age, almost everyone can afford a computer, and if they haven't yet learnt how to use it, then probably you can find some other lawyer who can even if he/she is younger. The productivity gain of using computer to draft petition/IA, email to lawyer for review etc are just too high to ignore. So there is no need to settle for old fashioned way of doing things.

Meet the lawyer at office before important events like submitting something in court, discussing evidence, how to cross-exam wife, and such things.

While in court during cross-exam, stand next to advocate with a list of written points to remind him to ask wife, in case he forgets. You may also keep some evidence/documents ready with you to ask wife during cross-exam.

## **Communicating with lawyer**

1. Phone is preferred mode of communication for most lawyers, only problem is that they may choose not to pick up when they don't want to! And they will never tell you the reason behind it, that's how the lawyers work, so we have to learn our own ways on how to deal with it.
2. The backup mechanism I use is that if my advocate doesn't pick up the phone, I assume he is busy rather than in any conspiracy theory, and send him an SMS about whatever matter I wanted to convey. Sending SMS also keeps a documentary trail in the phone, and one can use SMS backup software to keep the whole history of SMS safe for later use if required. Sending SMS also relieves me of my responsibility in conveying the information to him at the appropriate time.
3. A few days before next hearing, call the advocate if necessary and discuss. For routine hearings, it may not even be necessary if it is understood that both of you will be present there.
4. Combining phone, SMS, and email, one can have a reasonable trail of communication. The email and SMS especially can be useful to prove later that you supplied the information and instructions at appropriate times, in case the advocate didn't take action on them.

## **Changing lawyer**

If one has done all of the above ground work, managing a lawyer is not difficult, and even changing a lawyer won't be a problem. But changing of lawyers should be done only after having a defined trail of communication. If you are changing advocate every year, then probably it's your own expectations that are unrealistic.

There is a kind of fear in many people's minds that their lawyer will not give them NOC (No objection certificate) if they want to change him/her. I find this humorous, since if you read the

Advocates Act, it's the lawyers who should be afraid of client taking action against them, in theory at least. A lawyer can have no objection to client switching to another lawyer barring if his agreed fees has not been paid.

# **Ch 8. Things to do - Evidence, Story, CrPC 91, Show expenses**

# Write the story, Collect the evidence

First thing we need to do when we expect cases from wife is to write down and document that have happened since marriage, and continue to update it as time passes by. Yes, this seemingly boring exercise may save you thousands and lakhs of rupees one day!

Doing this exercise has lot more benefits than the possible tangible ones on one's future bank balance. Writing things down can also work as an emotional catharsis and a release of baggage, so one tends to disassociate from the negative experiences, rather than holding them inside.

## Write the story

1. Write complete details and sequence of events which happened from time of engagement, wedding, honeymoon etc, after marriage, till wife left. If she had left several times and came back, then write all those into a computer document or a large notebook if you don't use computer much.
2. Try to be specific with dates and times. If you don't remember the time, then mention the approximate time of day, for example "In morning we went to restaurant at XYZ place". If you have the bill of the restaurant, then that will go into the evidence basket.

Above may seem more relevant for dealing with other cases than maintenance. Nevertheless, I would advice everyone to write these things anyway, when you suspect wife is going to file more cases, which usually they do when they know you are in fighting than compromising mood.

1. Main reason is simply that human memory is not perfect, and we tend to forget things and details with passage of time. If your wife has left 6 months back and you are waiting for what will happen next, you may tend to think that let's wait and watch and then take next steps. Which is a correct approach actually. But if she files a DV case 1 year after leaving you, you will have to scramble and start preparing a response to her petition. Many events may slip from your memory with the result that your objection will seem reasonable but will lack the flow or details which can make it into a compelling story.
2. You write the points once, and the same can be used whenever required in any case she may file in future. It sounds very business-like, but it works!
3. Also, most of the allegations and stories made by wives are actually created by lazy-minded divorce lawyers who copy paste things from one client's petition to another. One look at them can reveal inconsistencies, contradictions, and there are hardly any precise statement about dates and times of events. If you think your lawyer is not good, I would say that your wife's lawyer will be worse! They are just riding on the waves of women empowerment till the waves last. When you draft your objection to wife's petition with chronological and precise details of events, it will be very clear to the judge as to which party is more dependable in this case. All these statements can easily be converted into the evidence affidavit at the time of filing evidence, and preparing evidence will seem like a breeze to that time.
4. Having same points in your evidence affidavit as in your previous written statement/objections will give your story lot more credence. Many wives' petition and evidence affidavits are quite different, because they know that no one can file a perjury case on them based on statements in petition. So at the time of evidence, they will produce an affidavit with toned down allegations or some of them may be completely removed too. If your objections and evidence affidavit are mostly same, then this also can be used as a point in arguments that wife had made wild allegations in

petition but changed her statements in the evidence affidavit.

## **Collect the evidence**

1. As you write the story mentioned above, for each event in the story, try to think if you have any documentary evidence for that. As an example, I mentioned earlier about a restaurant bill. Keep collecting all such evidences and start filing them in chronological or reverse-chronological order in a file. For electronic evidences like PDF bank statement, computer screenshots etc, you can maintain them in folders and files on computer, or use productivity tools like Evernote to organize them even better.
2. Collect all photographs of wedding, honeymoon etc, other photographs of ceremonies, visits to any places with wife. When wife says in her petition or affidavit: “I was not given food”, you can show those cheery pictures of your honeymoon to her during her cross-exam to ask why her cheeks were so rosy and plump if she was starving all the time!
3. Also collect any videos.
4. Get copies of all bank statements, credit card statements of your own. Get wife’s too if you can.
5. Keep record of all SMS. Use a software to backup the SMS since old SMS may get deleted on some phones.
6. Keep record of phone calls on the phone or get itemized billing of calls from phone company. There are software available which can keep backup of unlimited number of calls.
7. Keep all receipts especially cash receipts since there won’t be any other record of cash purchases.
8. Start to record phone conversations etc from now onwards at least if someone from wife’s party is still in touch with you.

# Earnings or Qualifications?

An often repeated statement by husbands who face maintenance cases is: *“My wife works but I don’t have any proof.”*

Well, how about collecting some?

To reduce or deny maintenance to wife, the single most important thing is proof of her income or working status. She may be a qualified PhD, but that won’t matter much if she has never worked in her life.

I know my above statement would make some people indignant with righteous anger. “How can we allow such women to claim maintenance, when they have such qualifications?”. Well, I couldn’t agree more! My point is not about educational qualifications which are nothing more than certificates on paper, but income earning capacity.

I would say it’s easier to deny maintenance if your wife is illiterate, but she owns a chaat-shop doing brisk business!

After going through the CrPC 125 and comments, it would be clear that the main thing a woman needs to justify to claim maintenance is “unable to maintain herself”. What is easier to deny maintenance to: an illiterate woman running chaat-shop doing sales of Rs 50,000 per month, or to a jobless woman with PhD in a useless discipline which doesn’t have much job potential? You can argue all you want why did she do a PhD in a discipline with no job-earning or teaching potential, but how does that matter to the judge whose job is to decide whether to give maintenance or not? If the judge doesn’t know about the job potential of that PhD degree, you have to convince the judge by giving some evidence of earnings of people with that qualification. The routine manner in which interim maintenance orders get decided means that one has to be prepared to argue verbally in open court else the next chance will only be available when the trial starts for passing final orders. Usually women tend to abscond from the court especially when they get a high maintenance order.

Above examples may seem a bit exaggerated, but I made them to drive home a point.

It’s not about qualifications, it’s about earning and income.

## How much income could your wife earn if she worked?

Nowadays, there is an advantage that lot of information is available on internet if one knows what to look for. I would suggest a novel approach to tackle with this pernicious problem of wives being allowed to get away sitting on their butts when they can easily find a job if they try.

1. Go to one of the job or career related sites, where sometimes they give information on how much a person with X years of experience can earn in a particular job description. I think glassdoor (link below) has such data for many jobs.

<http://www.glassdoor.co.in/Salaries/index.htm>

1. Try to find what kind of job description would fit your wife’s qualifications. For example, if she’s an MCA (Master of Computer Applications), then she could get a job as a software engineer. Type software engineer into the job description and try to find the salaries in various companies, various cities etc for the job of a software engineer.

2. Take screenshots of those web pages and submit to the court in your evidence or arguments at

interim order stage, stating that your wife if she applied for a job will get on average a salary of XX,000 p.m, so in the interest of her qualifications and education not going waste, she should be encouraged to apply for such jobs and get employed.

I think the time has come to try above approach by husbands facing maintenance cases from qualified but non-working wives. I see absolutely no reason why it cannot be made to happen even for wives who have never worked so far. It's quite logical that a person who got education of 4-5 years after 10+2 should seek some employment, rather than sitting at home collecting maintenance from husband. That is the principle which needs to be brought into the maintenance regime.

Later, we discuss many judgments where maintenance has been denied to qualified non-working wives, but most of these are in cases where wife had worked at some point of time. Also, it will be much easier to deny or reduce maintenance in cases of somewhat professional qualifications like MBA, MBBS, LLB etc than somewhat more educational qualifications like MA, MSc etc. It's simply because it is still not considered unusual for many women in India to get a higher degree in education, but not do any work after marriage.

# What kind of proofs to collect?

Best evidences to prove wife's income and working status are given below in order of their importance (in my opinion):

1. **Income tax return (ITR):** An income tax return is a document filed by a person stating his/her income, deductions, and tax liability. It is the best document possible to prove someone income since people usually will never ever state more income in it than they actually get, since they have to pay tax on whatever income they state in it. If they make a mistake and state more income, they end up paying more tax. So whether your wife is an HR executive, or running a coaching class for students, her income tax return is one document she will not be able to refute. For working people, their income tax is mostly based on Form-16 (TDS) declaration, so
2. **Form 16 (TDS) declaration.** This is given by employers to employees to attach with their ITR. It is an authoritative statement of one's salary since under-reporting the salary by a company to save on TDS can make them liable for prosecution by income tax department.
3. **Latest or even old salary slip from employer.**
4. **Appointment letter.** An appointment letter will have designation, some work description, salary, perks available to wife. The only problem with it is that wife may claim that she has left the job. Or it may be an old appointment letter stating salary at the time of joining rather than current salary. In either case, CrPC 91 can be used to ascertain details from company, and threat of perjury should also be used.
5. **Statement of wife's account from EPF (employee provident fund) office.** Some lucky (because they tried) have been able to get wife's name in list of employees, or even the monthly deduction of wife's EPF by filing RTI to employer (public sector). I know one person who got the list of EPF deductions of all the employees (including his wife's) in a company simply by asking for it in an RTI! Since deduction for EPF is a percentage of one's basic salary, a good estimate of basic salary can be made based on EPF amount.
6. **A picture of her workplace with she doing the work.** Based on my assessment from cases seen, many women who claim to be jobless are working as teachers, doing tuition/coaching of students at home, and some are self-employed doing work like tailoring, running beauty parlour etc. For many of these, it may be possible to collect photo or video evidence, especially if they are in the same city, and you know the address.
7. **Bank statement showing regular salary deposits every month.** A regular amount every month will easily raise the possibility of it being salary paid by employer than her father doing NEFT transfers to her. The description column of bank statement may also give clues as regards to the source of transfer, which you can use further to file CrPC 91 application should you need more proofs.
8. **Bank statement showing other sources of income like rental income, interest on fixed deposits (FD) etc.** Usually most women who file cases don't have any property of their own, but I mention it since many people tend to forget that income can include income from other sources than salary. In few cases, wife's father has many properties, so you can try to find if any of them are in his daughter's name which might be providing her with rental income.
9. **Profile on LinkedIn showing her working status, past employment history.**
10. **Profile on Facebook showing her pictures with her colleagues at office get-together, and such similar evidences.**

11. Business card of wife showing her name, company name, designation etc. Now it is not difficult for someone to get a business card in another person's name printed if the printer is not very careful about checking whether you represent that person or company. So by itself, it is a weak proof unless she admits during cross-exam that it is her own business card. So this can be used to file CrPC 91 application to get her salary details from her company.

12. Any proof of her assets. For example If she drives a car, you can submit pictures of the car alleging that she bought it with her own funds. She will be put on the defensive trying to explain if she is the owner of the car, or the source of the funds used to purchase the car.

It's also very useful to network with other men in online [WhatsApp forums \(like on MRI site\)](#) and with other men at local city's weekly meetings. It's by such relations that sometimes people are able to get details of wife's job simply by finding someone else who works in same company, or someone who can get the proof from a source. But one shouldn't approach these forums with this being the sole objective. People would help others in the same boat provided they seem trustworthy, rather than those who seem to appear only to ask for a favour, and then disappear for few weeks or months till they need a new favour again!

### **What proofs to collect if you suspect wife of an affair?**

We now come to an important part of fighting maintenance cases, should you have a strong suspicion that wife has a boyfriend. Unfortunately, for emotional or whatever reasons, this is messed up by husbands because of two reasons:

1. Even if they have evidence like photo of wife with a boyfriend, their lawyer will discourage them from showing it to the court. My guess is there is an unwritten rule being followed in matrimonial cases: *"Don't show a woman in bad light"*. Which basically means that husbands have to face false allegations so wives can claim maintenance, but the one easy proof which can deny maintenance to wife should be kept under wraps. Does anyone get the logic behind this?
2. Husband himself has some psychological or emotional baggage which he has not dealt with. Maybe he wants to confront his wife and hopes for an apology or an admission of guilt by wife, which may even lead to a rapprochement. Maybe he feels inadequate that his wife found a 'better man' than him. Or maybe he is in a state of shock and feels cheated about how the events have conspired against him.

All that said, proof of wife's affair is a huge piece of evidence which can be used to show that it was she who was in the wrong and she has filed the false cases only to hide her own fault, and yet claim maintenance and other benefits given to a legal wife.

The proofs can be any one or more of the following:

1. Any emails, SMS, chat conversation of wife with boyfriend.
2. Item wise phone call records which show called number, date, duration of calls being placed from wife's phone to boyfriend's phone. It might be possible to get this from her phone company using CrPC 91 application to court too.
3. Any voice/video recording where wife admits to having a boyfriend.
4. Photo/video of wife with another person who is not apparently her colleague or relative, and the photograph shows a non-platonic relationship between the two.

Just a piece of caution, while I strongly suggest using allegation of affair if you have good evidence to back it up with, don't try to blindly make such an allegation hoping to get some advantage. Even if you don't have documentary evidence but you are aware of the affair, you can make the allegation, just don't make it if you know nothing of the kind happened.

# Using CrPC 91 to collect evidence from wife's workplace

CrPC 91 is a section which can be used to get details of wife's salary, appointment letter etc if you have some basic proof of wife's working status. As discussed earlier, this can be something as simple as her company business card, or her picture on Facebook with office colleagues. What you need to know is the name and address of the employer to whom this summons will be addressed.

The next hurdle is to convince the judge about the necessity of doing so in the interest of justice and equity. You should state that wife's working status and income is the crux of the issue in deciding whether she is unable to maintain herself, and if this opportunity is denied to you, you will be put to irreparable harm whereas it will cause no prejudice to your wife.

Following is Section 91 of CrPC.

## Section 91. Summons to produce document or other thing

1. Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

2. Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

3. Nothing in this section shall be deemed-

- i. to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891 (13 of 1891), or
- ii. to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

One person recently asked me this question: *"how to convince judge to ask bank for wife's bank statement"*. My understanding of court procedures and how judges work tells me that they are not very much inclined to delay things based on speculative issues raised. Unless you show some proof, maybe even a photocopy of bank statement of wife, judge may think that this is a fruitless and delaying exercise because what would be the result if the court got the statement from the bank, but there was nothing in the statement to indicate that she was getting some salary deposited every month? So unless you are able to show a good possibility of evidence which may result from CrPC 91, the court may deny the request.

What is very common is that courts will easily issue a CrPC 91 on husband's employer if he doesn't produce his own salary slip or income details. So the courts are geared to find out whether maintenance should be given and if yes, how much. They are not deeply interested in finding out the whole truth behind wife's statements about her working status etc.

# CrPC 91format

This is a sample application under Sec 91 of CrPC (Code of Criminal Procedure) to get salary slip and employment details of a working wife who has filed either a CrPC 125 or DV case to claim maintenance.

You can modify this based on your case whether it is for DV or maintenance case u/s 125 CrPC You need to fill the name and employer details.

IN THE COURT OF \_\_\_\_\_ A.C.M.M.,

Name of the Petitioner ..... Petitioner Versus Name of the Accused ..... Accused/(Respondent in case of CMis)

Application U/s 91 of the Code of Criminal Procedure

The Respondent(s) above named submits as follows: 1. The Petitioner has filed an application under the provision \_\_\_\_\_ (may be D.V/CrPC 125) by making false allegations.

2. The Petitioner is employed/working in \_\_\_\_\_ (name of the company). The petitioner has suppressed/not provided the salary/employment details.

3. That since the petitioner is claiming maintenance when she is having (high) income which she is not disclosing, hence the respondents seek the necessary orders from this Hon'ble Court for seeking summons for production of the documents from the relevant persons in custody of the same.

4. The documents sought to be summoned are essential and necessary to decide the dispute in the present petition.

5. The documents so sought to be summoned are:

Sl. No.	Person from whom document	Description of document	is sought to be summoned
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=====	A.	Managing Director	Letter of Appointment of Wife	Company Address	latest salary slip,
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In the interest of justice and equity.

Place: \_\_\_\_\_

Date: \_\_\_\_\_ Advocate for Respondent.

# How to collect evidence of wife's work status etc?

We have already discussed how CrPC 91 can be used to collect more details of wife's employment if one has some basic proofs.

However, a problem raised often by many men is how to collect even basic proofs?

Unfortunately, answer to this question cannot be found in any manual. If one has the will, one can find ways to find the information. Like I mentioned before, one of good ways is to be aware and be in contact with other men who are facing these cases. On MRI site itself, we have communities both on [Whatsapp](#) as well as on [Facebook](#) where many men interact with one another about their issues.

Most of the time, I feel it's more about conviction about knowing what course of action one wants to take. There are always ways to find the information, as one person from Gujarat has set by his example:

## [Gujarat HC allows examining account books of wife's employer in maintenance case](#)

The person above faced a hurdle that even his video recording of wife working at employer's place was being discredited. But he had the conviction to appeal to Gujarat high court to make sure the right order got passed.

I think that is an important ingredient which makes the difference between success and failure. Don't listen to anyone including your own lawyer's advice that so and so evidence is not useful. Produce it in court with conviction, and don't believe anyone's word except the judge's whether it is useful or not.

## Whether to use detectives?

This question has been asked many a time, and I know many husbands who have actually used detectives. But so far I haven't come across any case where a husband said that he got a great piece of evidence by using a detective's services. On the other hand, I have seen many examples where people got great evidence of wife's working status by using simple tools like RTI(Right to Information). So in the end, I think that even if one uses a detective, one should define some clear goals for him to achieve and pay according to results. Easier said than done, given some stories heard that the detective will collude with the other party, most probably taking some money from them too. Nevertheless, I would suggest one to use a simple results based payment if one uses detectives:

1. Copy of wife's income tax return: Rs 5000
2. Copy of wife's appointment letter: Rs 2500
3. Photo of wife entering or leaving a workplace: Rs 1000

## **Ask wife to give affidavit that she is not working**

This is a technique which can be put to good use, and which most people may not be aware of. Let's say that your wife denies that she is working anywhere, and you know that she is working at XYZ company, but as yet you have been unable to collect the proof.

The interim maintenance (or even final order) is about to be decided. In this situation, you have perfect knowledge of her working status, but nothing documentary to produce in front of court.

What you can try is: Ask the court that wife should state in an affidavit that she is not working anywhere as of current date. Then you are ready to pay maintenance amount whatever is awarded.

This may seem like counter-intuitive. The intention here is not to say that I am willing to pay maintenance, but that I want wife's statement to be on an affidavit. Especially during interim orders, things are decided based on husband's salary slip, court drama, verbal arguments etc. Wife's allegations are not produced on an evidence affidavit at that time. So one will not be able to file perjury on those statements even if one can prove them to be lies later on.

With an affidavit on record, husband can file perjury under CrPC 340 on wife at a later time when he gets the documentary evidence of wife's working status/income etc. A perjury application is one of the best ways to bring opponents to their knees and close all cases without any alimony, however given the fact that the divorce industry also understands all these things, they try to keep things at interim orders and wives simply stop coming to court at evidence stage after getting the interim maintenance order. So you can use this technique to push the right buttons in the system, which may yield results at a later time.

# **List investments and expenses to show reduced in-hand income**

One of the common techniques to save on maintenance is to reduce one's in-hand income by showing more expenses. Of course, the expenses have to be of useful rather than wasteful nature, and it is better if the spending is towards creating an asset like a house, or investments for pension, old age security etc.

Many people have only a vague idea of their actual expenses per month, and so they would tend to underestimate their household and personal expenses every month.

So the first exercise is to sit down and list down the following monthly expenses:

## **Regular monthly expenses**

1. Basic living expenses on food, groceries, milk, clothing
2. Rent paid on house if living in rented place, else EMI of house. If living in self-owned house/flat, this expense becomes zero. Add to these maintenance amount to apartment complex every month if living in a housing society/apartment.
3. Money spent on petrol and/or public commute whether for official or personal work
4. Utilities bills: electricity, water etc
5. Other subscription or services based expenses like electricity bill, TV subscription, newspaper, broadband internet, mobile, 3G, and so on.
6. Household expenses like gas bill, maintenance amount spent on fixing things like plumbing, electricity, painting the house etc.
7. Any profession related expenses like some professional subscriptions etc
8. In case your parents or siblings are dependent on you, include those expenses as part of above, or list anything separately for their personal expenses. We will discuss later advanced technique of dependent parents filing CrPC 125 case on you so your expenses get reduced by the ordered maintenance amount.

Add all of above to arrive at a figure of regular total monthly expenses

## **Regular monthly deductions from salary**

1. Credit to EPF(employee provident fund) made by employer.

## **Regular yearly or one-time in an year expenses**

1. Premium towards LIC insurance policies
2. Annual maintenance of the house, or such one time expenses.
3. Any one time expenses incurred during the previous year, for example, for some necessary repairs or renovation done in the house
4. Insurance premium on vehicles owned: whether 2-wheeler or car.'
5. Insurance premium on mediclaim/hospitalization insurance.
6. Any donations you make regularly to some charity, NGO etc every year

7. Money spent on your own personal things like clothes, basic entertainment etc. Also list down similar expenses you make for dependent parents or siblings.

8. If you have responsibility of education of a younger sibling etc or contributing to household expenditure in an joint family, make sure it is covered in one of the items above, or else list it down separately.

Take a sum of the yearly expenses above and divide by 12 to arrive at a typical per month figure of the yearly expenses. Now add this total to regular total monthly expenses and monthly deductions from salary calculated before, which now gives the approximate outgo from your income every month.

Now what we need to do is to increase this outgo in a judicious manner so that the in-hand income is reduced, while any assets or investments that are being built will still be out of reach of wife. Below are some ideas.

## **Investment oriented expenses**

One can do investments from funds one intends to save, and put them into long term investments which cannot be touched by wife, thereby reducing the liquid bank balance or fixed deposits kind of savings, which have some possibility of wife laying a claim on them

1. Increase deduction towards EPF and such available investment opportunities.
2. If you are risk averse and don't mind doing long term locked investments, it will be good to invest more or up to maximum tax exemption limit in avenues like PPF (public provident fund) which amount is supposed to be locked for 15 years. Such investments are made for one's own old age security or for children's benefits, and so wife will not be able to lay a claim on them.
3. If you do not have any life insurance policy taken so far, you can choose to take up term life insurance which is pure life insurance and hence low premium, or take a more expensive endowment policy which is investment and pension oriented. Make sure to make someone else than wife as the nominee in policy. Just like EPF and PPF, these things cannot be touched by anyone else.

## **Non-investment oriented expenses**

1. Take mediclaim/hospitalization insurance policy if you don't have one already.
2. You may want to start or increase the amount of donations to some charity or NGO. Note: Let it be your wife's or society's problem to prove why wife's needs are more important than your need to do your bit for social causes close to your heart.

In next section, we discuss about how dependent parents can also file CrPC 125 on you, so as to further reduce your in-hand income.

# Get parents to file CrPC 125 maintenance case on you

Let's now discuss a provision of the overall evil CrPC 125 which can be used as a way to save on maintenance to wife. Let's see below once again the first few sub-sections of CrPC 125:

Section 125 in The Code Of Criminal Procedure, 1973

125. Order for maintenance of wives, children and parents.

(1) If any person leaving 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:

The heading of CrPC 125 and clause 125(1)(d) clearly allow it to be used by parents to file maintenance application on their son if they are unable to maintain themselves. That can become an effective way to reduce your in-hand income since you have to pay the ordered maintenance to parents every month!

The only necessary condition is that parents should have no regular pension or sufficient income from interest on fixed deposits/investments, rental income, and the like. To the extent that they may have some income from these sources, they can still file a CrPC 125 application on you to claim the remaining amount required for their sustenance.

For example, if your father and mother need Rs 15,000 per month for their needs, but they only have income of Rs 4,000 per month, they can file a CrPC 125 application to ask for Rs 11,000 from you. Of course, we are assuming here that you have somehow morphed from a "Shravan Kumar" into a neglecting/evil son overnight after the wife filed a maintenance case on you!

Can parents file a CrPC 125 on you if all of you are staying in the same house? I bet they can. I also know one person who is living proof of that. The law does not say whether the son and parents to be living separately or not. It's not the case like wife has filed a divorce, so she must not be living in husband's house anymore after filing divorce. The CrPC 125 merely says that if a son is neglecting or refuses to maintain parents, they have a right to claim maintenance from son. Neglect is still possible even after people are living under the same roof!

Let's take a few scenarios about what items can be included as parents' expenses depending on their and your housing arrangement.

1. You stay in same house with parents, and the house belongs to parents. In this case, parents can

ask for living expenses from son. Some people may say that husband can pay rent to parents for living in same house, however to me it seems a bit fishy from social point of view. More importantly, purely from arithmetical point of view, your rent paid to them will reduce your in-hand income but it will increase their income. So they will not be able to claim that much from you in their CrPC 125 application, with the likely net effect on your in-hand income being the same after their CrPC 125 maintenance amount is decided.

2. You stay in same house with parents, and the house is in your name alone. In this case, parents can again claim living expenses from son.

3. You stay in different house from parents' house, and their house is self-owned. In this case, parents can again claim living expenses from son.

4. You stay in different house from parents' house, and you pay rent for their house. Your rent payment towards parents' residence should be declared as a necessary expense in your response to CrPC 125 by wife, as already noted earlier.

5. You stay in different house from parents' house, and they pay rent for their house. Your parents can add the house rent amount to the total amount asked for in CrPC 125 application. A question may indeed arise in mind of judge that how are parents able pay the rent of house every month if they have no means? The appropriate response should be that it is coming from their savings for old-age etc (no need to declare all those savings' details in their application), and they cannot be compelled to exhaust their savings especially when their son has turned into a neglecting/evil son! They would need those savings for future security, health check-up etc since they cannot depend upon the son to do the same for them.

# **Ch 9. Myths and things one should not do**

# Myth 1: Leaving job will help me save maintenance

This is a perennial favourite and a first thought in minds of some people, when they get a maintenance case filed on them.

“If I leave my job, I won’t have any income. If I don’t have income, how can the judge ask me to give maintenance to wife?”

There are few points we should take note of:

1. Any strategy or tactic which is too obvious, would have been thought of by many other husbands in the past, who got maintenance cases on them. They would have tried them, and slowly the judges would have learnt how to take care of such cases. Unless you are sure you have read enough past judgments all of which awarded zero maintenance to wife upon simple declaration by husband that he doesn’t have a job, this is a futile and risky exercise.
2. Some men who have other cases also like 498A etc on them think that they will tell court that they have lost job due to mental tension and torture by wife. Well, whether the wife has tortured husband(alleged verbally in open court), or husband has tortured wife (alleged in IPC 498A case), it is still pending a trial in different courts. So, unless you have some more substantial evidence in your favour, for example your [passport was impounded and you lost your foreign job](#), this will be taken more as a evasion and excuse than an actual fact. In rare few cases, I have seen some men who got a certificate or prescription from psychologist as proof of depression. However the benefits if any in saving maintenance by such techniques may be short term, whereas the loss of future career and earning potential are long term bad effects.

Which is a better scenario of the two below?

1. Husband has a job with income of Rs 35,000 p.m. Interim maintenance awarded to wife: Rs 5,000 p.m. Net in-hand income. Rs 30,000. A small dent in income, even if lot more to the ego.
2. Husband has left his job to handle the mental depression and cases filed by wife. His income is zero. Interim maintenance awarded to wife: Rs 2,500 p.m. Net in-hand income. Rs -2,500; with more legal expenses on the way since husband definitely wants to appeal against this unjust order!

Let’s assume for the sake of argument that judge gave a zero maintenance order to his wife. His net income is still zero since he doesn’t have a job. He’s been fighting cases for last 9 months and intends to do the same vigorously for next 1 year by which time he will prove his innocence in 498A as well as other cases, and then take up a job. One year passes, the 498A case hasn’t even come to hear-before-charge stage. One more year has gone after this, wife is not coming for evidence in 498A. Our false-case-fighter friend tries various approaches on how to get wife to come to court to give evidence but no one including his own lawyer seems to have any interest!

Time slowly passes, and it’s been few years that our friend has been without a job, and now it’s really difficult to find an employer who will be willing to hire him at even half his previous salary. Worse thing is cases are still pending in courts and it looks like they may remain so for few more years! Also, in India the mindset of employers is quite set about what maximum age person they want to hire for each experience level, and it becomes quite difficult to get a job if one has on a long career break. Sorry! Fighting cases with wife is usually not considered a great reason to having a long career break. If you instead say that you went to Himalayas and stayed with sadhus for 2 years, that might work out better in minds of HR. Some people may try to give a family/emotional reason that they

were taking care of an ill family member, like father or mother. Again, it won't create a very good impression on anyone. Probably, it's better to say: *"I wanted to teach my wife a lesson and so took a long break, but now I realize I could have done it in better way."* All that is history now. Case closed.

After our lives are over, no one will remember us for which person was taught a lesson by us! Unless one has a larger cause in mind, leaving job is a useless exercise. One can continue to work and still fight the cases. The fact is that most of the people who have won their cases ending with zero-alimony mutual consent divorce continued in their jobs and still managed all their legal cases, including travelling to other cities where the cases were filed.

## Myth 2: Taking back wife can save maintenance

Let me address this myth by citing a real question asked by a person, and my comment on his approach.

*Question:* I am slapped with 498a,406,34 IPC , DV and CRPC 125 . Got AB in criminal case. While in DV interim of X000/- per month is ordered. Her evidence completed in DV half cross is done half is pending will be on DDMMYYYY . in 125 judge asked her what u want she said divorce. Asked me I said I am ready to keep her. Judge said if she is unwilling u can't force her so anyway u have to pay alimony as per law monthly so it is better u pay 1 time alimony and take MCD.

*My view:* The fundamental mistake being done here by husband is like this. Wife has filed criminal cases, and asking for divorce verbally during open court proceedings, but she didn't file divorce petition actually. So in a way she filed criminal cases and DV to reach her actual target which is divorce and off course lumpsum settlement. Actually she has used the right weapons available in the Indian divorce industry and able to achieve the real target of divorce/money without even filing for divorce! That's how the game works. Wives don't even file a divorce petition, but not only they get the divorce but a handsome lumpsum settlement to go with it!

Now husband here says that he wants wife to come back. What does that tell any reasonable third person not associated with either party? That wife has filed all these cases, she wants divorce, but still husband wants to take her back; so the conclusion is that husband must have tortured her and wife's criminal and DV allegations must have some truth!

No matter what any lawyer tells you, after wife files DV/498A and such allegations, one should never say during mediation or open court that one wants the wife to come back. Proceed with evidence, cross-exam, full trial and defeat wife's cases. Wives who drag husbands to court do not do it with intention of being implored and brought back! Their intention is to get your money and get their freedom in form of so called mutual consent divorce.

If you follow the advice given earlier in this book, once you fight well and have a low interim maintenance awarded to wife, she won't be able to wait for many years living off on a low amount every month, so she will be forced to decide to call the battle off and go for mutual consent divorce with zero or a token alimony.

## **Myth 3: Filing RCR (Section 9) can save maintenance**

Many men think filing RCR will achieve one or more of the following reasons:

*1. Wife will come back if I file RCR.*

Multiple phone calls, meetings, and elders' advice couldn't do it, but one piece of paper called RCR will do it! I think there is a hidden factor called Male Vanity behind this overly legal approach taken by husbands to solve marital issues. My guess is some men think that since wife is acting smart, creating problems for everyone, and not cooperating; they will also try some legal techniques to show wife her true place! So either from their own 'research' or based on lawyer's advice, they decide that taking a legal approach will create some fear or some respect for husband in mind of wife. All that may have been true in another era, but these days with the fad of women empowerment and everyone exhorting women with expressions like "you go, girl", any woman living in a reasonably urban area in India will be well aware that she has some rights protected under the law, and the law is not in favour of men anyway. Most of these women anyway come from feminist/matriarchal families, and they have learnt their lessons while growing up under the tutelage of their mother. They are least bothered with legal piece of papers like RCRs, since they are well aware they can create legal documents of their own at any point of time they want to.

*2. If wife doesn't come back, I will at least save on maintenance if she files a maintenance case later.*

RCR leading to saving of maintenance used to happen in last century when men could use the argument of wife not joining back as a desertion by wife for no good reason. Even recently, one person wrote in MRI151 WhatsApp group that he has filed RCR because there is a supreme court judgment which denied maintenance to wife since husband had filed RCR already. When I read that judgment, the details were that the matrimonial cases had started in early 1990s, and the final order came in late 1990s. The whole case had started in 20th century and finished in 20th century. But we are in 2015 right now, not 20th century!

In 21st century, women who file cases don't stop at just one case. If they have filed DV case on you first, your filing RCR will be like acknowledging some truth of her DV case. That may actually lead the judge to award higher maintenance since judge will think why do you want wife to come back if the DV allegations made by wife are false? If she has filed 498A also before your RCR, your RCR will be like accepting your guilt on her 498A allegations!

In case you file RCR first and she files DV case later, and you don't withdraw your RCR petition after her DV case, again it will create the same impression in everyone's mind that since you want wife to come back inspite of her filing domestic violence allegations, there must be some truth in her allegations. That can actually lead to award of higher maintenance and compensation than lower, since DV act specifically allows for not just maintenance but even compensation for violence, mental harassment etc. So good luck to avoiding or reducing maintenance by filing RCR. That used to be happen in older judgments 20-30 years back, and unfortunately many lawyers have not updated themselves or are deliberately misleading husbands into filing RCR. Whether you file RCR or you file divorce, a lawyer's fees starts flowing from the time you file any matrimonial petition. So there is always a conflict of interest whenever one approaches a lawyer for advice on handling a marital issue.

*3. Some other technical legal mumbo-jumbo which says that husband could get divorce if wife doesn't join within 2 years of RCR decree.*

I don't know of one single recent case where husband got divorce based on this mumbo-jumbo, but people want to believe such things, so I guess filing RCR will go on. All the cases of RCR leading to divorce decree are probably from 20-30 years back. They are from history, from an era when maximum maintenance amount under CrPC 125 was Rs 500, and DV Act had not been passed. In 21st century, we should read judgments passed in 21st century, and be aware of what's happening in judgments passed under newer legislation like DV Act.

What actually happens after filing RCR is that wife's party will realize that the time to go legal has come now. If they haven't filed any cases yet, expect a series of cases one by one in any particular order: DV case, CrPC 125, IPC 498A, and more. But it's more likely it won't be CrPC 125 because that is considered a first weapon to test the waters. So if it's CrPC 125, also expect a DV case few months down the line where they can make domestic violence allegations to their heart's content.

# Ch 10. How to use judgments and precedents?

In Chapter 6, we covered how to file objections to wife's maintenance application under CrPC 125 or DV Act.

Under CrPC 125, the main way to deny maintenance amount is to deny any neglect or refusal on part of husband.

Under DV Act, the main objection of husband should be to deny all allegations of domestic violence made by wife - be they of any form – whether physical, emotional, economic abuse etc.

Some of the evidence collected as suggested in Chapter 8, should be produced in court to show that her allegations are malicious and motivated with sole purpose to harass husband, and claim maintenance.

One basic principle of law is: No one can take advantage of their own wrong. For example, I cannot take up a insurance policy on my car, next day burn the car myself, and then proceed to claim the insurance amount from insurer! That would be taking advantage of my own wrong.

We have to use this basic principle to deny maintenance always. Tell everyone, judges, mediators, opponent advocate, your advocate; that this woman cannot be allowed to take advantage of her own wrong. She cannot leave husband house out of her own free will, cook up some sob stories of violence at the hand of her husband, and then claim to get maintenance from husband based on those cooked up allegations.

It's a very simple principle, but as yet I haven't seen it being argued in courtroom, or being mentioned in maintenance related judgments a lot. It needs to happen more and more often. The reason it's not being mentioned is simply because of two reasons:

1. Many husbands themselves are in two minds about whether wife will come back or not, so they think why make it difficult for her to come back? They end up only defending weakly, or even making the mistake of doing things like filing RCR etc, which can actually lead to higher interim maintenance than lower contrary to what many think, as I have already explained in Chapter 9.
2. The husbands' lawyers in matrimonial cases basically take it as just one more case: they focus more on doing routine things like filing petitions, objections, filing IAs etc, and then leaving it to the judge on whatever gets ordered. Let me clarify that I don't think the wives' lawyers are acting in any great professional manner either. They draft horrendous petitions with mistakes and contradictions, so they are probably as or even lazier than husbands' lawyers in my opinion. Matrimonial litigation is probably the easiest way to earn money if one has a LLB degree.

## How to use the judgments in following chapters?

Following chapters cite several important judgments, with important parts excerpted, and link being provided to full text of judgment. With each judgment, there are few points mentioned about when that judgment can be used by a person. HMA 24 judgments have been used in few places, only to explain general principles of maintenance when I could not find anything better under CrPC 125 or DV Act judgments.

1. If the facts of the case match your case, then rely on that judgment

2. If you can find a higher court's judgment similar to your case, prefer that than a lower court's judgment
3. Specifically for DV cases, Chapter 15 covers very important judgments which prescribe the appropriate procedure to follow before any question of maintenance or any interim relief under DV Act can be taken up by court. You must insist with your lawyer to impress upon the court that these procedures be followed without fail.
4. If you are unable to find any judgment which matches your case, then it means you have to fall back upon the basic principles discussed in this book so far, to try to deny or reduce wife's maintenance. If you are successful, you may be the person who creates that precedent which others after you will cite and follow.

Note: for some of judgments, only link to news story is given, because as yet no one has been able to find the full text of the judgment. If you want a particular judgment text desperately, then probably the best source will be an advocate who has subscription to a judgments database or to the bar council library. As and when I find full text of an important judgment, I will update the eBook and inform the readers so they can download the new version. Also, readers are welcome to email me any judgment they would like to see in the updated versions of the book by using the [Contact form on Men Rights India](#).

Also sometimes people ask for citation of a judgment. I have given the information from public sites, where sometimes citation is part of judgment text, and sometimes it is not. If the citation is not there, you can ask your advocate to find it for you. Ultimately, if we are paying lawyers for the work they are supposed to do, then it is our responsibility to make them do it too.

# **Ch 11. Judgments about wife's eligibility for maintenance and how much amount awarded**

# How decided if wife unable to maintain herself?

## Wife unable to maintain herself decided based on material placed on record

Use this judgment when several facts in your case are similar to following

1. Wife has filed CrPC 125 case and demands maintenance
2. You want to know how court will assess whether she is eligible for maintenance under CrPC 125
3. How court will determine her required standard of living for which maintenance asked for

Note: Amount of maintenance has to be consistent with the standard of living wife was used to at the place of her husband. This means having a living standard of luxury with wife can go against husbands should she later decide to file maintenance and demand same standard of living.

[Chaturbhuj vs Sita Bai - SC 2007](#)

### Important parts of judgment

8. In an illustrative case where wife was surviving by begging, would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under Section 125 Cr.P.C. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In *Bhagwan v. Kamla Devi* (AIR 1975 SC 83) it was observed that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C.

# How maintenance amount is to be determined?

## Income of woman from property must be taken into account - SC judgment

Use this judgment when several facts in your case are similar to following

1. Wife is residing in husband's house
2. Wife is receiving income from any asset which belongs to husband
3. Wife has any land/plot/residential/commercial property in her name whether own or inherited

[SHAIL KUMARI DEVI vs KRISHAN BHAGWAN PATHAK - SC 2008](#)

### Important parts of judgment

49. But even on merits, the Family court was not right in fixing the amount of maintenance. The learned counsel for the respondent took us to the evidence adduced by the parties. From the material on record, it is clear that the appellant No.1-wife is residing in the house belonging to the respondent-husband and such finding has been recorded even by the Family Court. It is also in evidence that she was receiving income from the land in her possession which belonged to her husband-respondent herein. It is true that the respondent could not state as to the actual amount received by the wife from the cultivation of the land. But it is also one of the considerations which is relevant and material while fixing the amount of maintenance. Moreover, appellant No.1 has inherited some land from her father.

## Delhi HC judgment in CrPC 125 maintenance, rejects one-third rule, both have income

Use this judgment when several facts in your case are similar to following

1. Both husband and wife have income
2. Child(ren) also there

[LALIT BHOLA vs NIDHI BHOLA & ANR - Delhi HC 2013](#)

### Important parts of judgment

11. Some documents were filed to prove that certain FDs were left by mother of the husband, but it cannot be the exclusive property of the husband. Admittedly, the mother was survived by her husband, one son and four daughters. Thus, the income of the husband at the most could be a few thousand from interest on FDs(pertaining to his share) in addition to the salary of 24,384/- per month. The rental income of the father cannot be taken into consideration for award of maintenance to the wife. Father has got other responsibilities, including four daughters who are given customary gifts even after their marriage. The maintenance of 12,500/- (9,500/- for the wife and 3,000/- for the child) is approximately 50% of the husband's income from the salary which seems to be just and reasonable as it is only an interim maintenance. The exact income of the husband from the FDs shall be the subject matter of the trial.

12. The interim maintenance awarded can neither be said to be excessive nor on the lower side.

Broadly, it appears to be just and reasonable.

## **Husband's gross salary 20K, net 12K, wife's maintenance enhanced from 2.5K to 4K, zero amount to 2 major daughters**

**Use this judgment when several facts in your case are similar to following**

1. You want to know how much amount typically may be awarded for maintenance for middle class income levels of husband
2. Daughter(s) above the age of 18 has filed maintenance

[Amod Kumar Srivastava vs State Of U.P. And Ors - Allahabad HC 2008](#)

### **Important parts of judgment**

6. The Act, therefore, makes it clear that any child who has attained majority is not automatically entitled to claim maintenance even if he is unable to maintain himself as was the case under the old Code. The inability to maintain himself should arise out of physical or mental abnormality or injury.

7. Keeping in view the law laid down in above mentioned cases, the impugned judgement granting maintenance allowance to Km. Bhavya and Km. Divya even after their attaining majority cannot be sustained, because as stated earlier also, both these daughters had attained majority much prior to the date of passing the impugned order and since their inability to maintain themselves cannot be attributed to any physical or mental abnormality or injury within the meaning of Section 125(1) (c) Cr.P.C., hence, they had become dis-entitled to get maintenance allowance from their father after attaining majority under the provisions of Section 125 Cr.P.C. If they want to claim maintenance allowance from their father even after attaining majority, then they can approach Civil Court for this purpose.

...

From the evidence adduced in Family Court Varanasi in the proceeding under Section 125 Cr.P.C., this fact is borne out that gross salary of Sri Amod Kumar Srivastava is more than Rs. 20,000/- per month and he is getting Rs. 12,000/- per month as net salary after deductions in G.P. Fund etc. The salary of Sri Amod Kumar Srivastava will be increasing from time to time. He is living alone and has no liability to maintain any other person. The prices of all the essential commodities are increasing day by day. Sri Amod Kumar Srivastava is a grade-I officer in New India Assurance Co. Ltd. He is income tax payee. Therefore, having regard to the social status of the parties and monthly income of Sri Amod Kumar Srivastava, his wife Smt. Neelam Srivastava also is entitled to live with dignity and comfort according to the status of her husband. Rs. 2000/- per month was granted as maintenance to both the daughters vide impugned judgment and that amount also was being paid to their mother Smt. Neelam Srivastava with their consent. In view of the findings recorded herein-above, this amount will not be paid now to the daughters. Therefore, keeping all these facts in view, the maintenance allowance granted to Smt. Neelam Srivastava vide impugned judgment should be enhanced and it would be just and proper, if Rs. 4000/- per month are granted to her as maintenance allowance.

# Judgments if adultery of wife alleged

## **Affidavit by another man that wife stays with him not enough to prove wife's adultery and denial of maintenance**

**Use this judgment when several facts in your case are similar to following**

1. If you given allegations in your objections about wife's affair or adultery, and want to deny maintenance on that ground as per CrPC 125(4)
2. You want to know whether such allegations are helpful in denying maintenance, and what standard of evidence required to prove adultery

Note: The import of this judgment is that courts may not take mere allegation of adultery very seriously to deny maintenance under CrPC 125, given by the fact that court raised the question if wife staying with another man could automatically mean that she having adulterous relation with that man. Also it is worrying why the court had to make an comment about woman living in adultery could be result of husband's adultery, when such facts were not present in this case.

[Arun Kumar vs Meenu Kumar - Delhi HC 2007](#)

### **Important parts of judgment**

13. Another aspect which has to be seen is that the contents of the affidavit are untested; though the deponent mentioned that the complainant stayed with him, the next assumption that such a residence amounted to adultery, would be drastic. In any form of proceeding, to conclude adultery, where civil consequences spelt out under Section 125(4) are to be inferred, the party likely to be affected has to be given reasonable and fair opportunity to meet and rebut the charge. Though Section 125 Cr.P.C. is in the nature of a welfare measure, and perhaps falls within the description of "special provision" under Article 15(3) of the Constitution, the exception under Section 125(4), loaded as it is in gender unequal terms, against the woman, has to be made recourse to with care and circumspection. The enacting part of Section 125, which entitles a woman to maintenance, makes makes no distinction whether the cause for her approaching the Court is adultery or infidelity of the husband; yet, the possible effect, viz estrangement and the situation of her living in adultery, is sought to ground a denial of that welfare measure. Without entering into the logic of this enforcement of morality through the legal process - which has to receive a wider debate, what can be said is that the Court should loath to rush into conclusions or a priori assumptions, since Section 125(4) enacts an exception. It should be satisfied about the soundness of such a charge, and cannot be content to elevate allegations into findings.

# Judgments on maintenance for children and wife to share too

## Wife has income but she wants you to bear all expenses of children through her maintenance applications

Use this judgment when several facts in your case are similar to following

1. Wife has filed application for maintenance of herself/children/both
2. Wife is working and some proof of her income is on record
3. You want to reduce maintenance expenses by letting wife share some expenses of children

Note: the judgment may be based on Hindu personal laws, but the concept of sharing expenses of children by both earning parents does not go away if maintenance application filed under any other act

[Padmja Sharma vs Ratan Lal Sharma - SC 2000](#)

### Important parts of judgment

In the present case both the parents are employed. If we refer to the first application filed under Section 26 of the Act by the wife she mentions that she is getting a salary of Rs. 3,100 per month and husband is getting a salary of Rs. 5,850 per month. She is, therefore, also obliged to contribute in the maintenance of the children. Salaries of both the parents have since increased with the course of time. We believe that in the same proportion, may be perhaps in the case of an employee of Reserve Bank of India at somewhat higher rate. If we take approximate salary of husband is twice as much as that of the wife, they are bound to contribute for maintenance of their children in that proportion. Family Court has already fixed a sum of Rs.. 250 per month for each of the child under Section 125 of the Code. That amount we need not touch.

Considering the overall picture in the present case we are of the view that a sum of Rs. 3,000 per month for each of the child would be sufficient to maintain him, which shall be borne by both the parents in the proportion of 2:1. We, therefore, direct that respondent shall pay a sum of Rs. 2,000 per month for each of the two children aforementioned from October 4, 1997, the date of the order of the Family Court.

# **Ch 12. Judgments about maintenance amount when multiple cases**

# Maintenance amount in CrPC 125 along with HMA 24

**Rs 7000 given in HMA 24 when already Rs 2000 in CrPC 125, husband income 45000, ailing mother**

**Use this judgment when several facts in your case are similar to following**

1. If there is possibility of you being asked to pay maintenance both under HMA 24 and CrPC 125, either now or in future because you already have or intend to file RCR, divorce etc under HMA
2. You want to get an idea of how much maintenance amount in total you may be asked to pay

[Kaushik Das vs Soumita Das - Kolkata HC 2014](#)

## **Important parts of judgment**

The petitioner claims that since the husband is being paid Rs.2000/- per month under orders passed in proceedings under Section 125 of the Criminal Procedure Code, the direction by the trial court on the wife's application under Section 24 of the Hindu Marriage Act, 1955 to pay Rs.7000/- as alimony pendente lite should include the amount of Rs.2000/- already being paid.

It is evident from the order impugned dated September 1, 2014 that the trial court was alive to the fact that a sum of Rs.2000/- was being paid by the petitioner pursuant to the orders passed in the criminal proceedings. After noticing such fact, a sum of Rs.7000/- has been directed to be paid. The petitioning respondent has made over the salary slip for the month of March, 2014 from which it appears that he has a monthly income of Rs.45,000/- after deducting the amount on account of income tax and professional tax. In the circumstances, a monthly payment of Rs.9000/- to the wife cannot be regarded as exorbitant even if the petitioner's case of his ailing mother is also to be believed.

CO No. 3203 of 2014 is disposed of with the observation that the petitioner will pay his wife Rs.7000/- per month as alimony pendente lite in addition to the sum of Rs.2000/- being paid in the criminal proceedings.

## **Amount awarded under CrPC 125 adjustable against the amount awarded in the matrimonial cases (HMA 24)**

**Use this judgment when several facts in your case are similar to following**

1. Wife has been awarded maintenance under both CrPC 125 and HMA 24
2. You want to reduce the total maintenance outgo, and want to use technical points of law or possible loopholes

Note: the judgment is not very detailed in the reasons given, and it is possible it may get challenged on points of law.

Along with giving favourable order to husband, the supreme court has done a balancing act by increasing total maintenance to 1000 (from 800 in HMA) and arrears to be paid too by husband. So one should be careful in approaching courts on fine technical points of law.

[Sudeep Chaudhary vs Radha Chaudhary - SC 1997](#)

## Important parts of judgment

6. We are of the view that the High Court was in error. The amount awarded under Section 125 of the Cr.P.C. for maintenance was adjustable against the amount awarded in the matrimonial proceedings and was not to be given over and above the same. In the absence of the wife, we are, however not inclined to go into any detailed discussion of the law.

7. At the same time, we feel that the claims of the husband and the wife are to be balanced. We, therefore, direct that the husband shall pay to the wife towards maintenance (which now comprehends both the amount awarded under Section 125 of the Cr.P.C. and the amount awarded in the matrimonial proceedings) the sum of Rs. 1,000/- p.m. commencing from 3rd July, 1990. The arrears, if any, shall be paid within 8 weeks.

# **Stay on CrPC 125 application when civil case on same matter pending**

## **Mumbai HC disallows multiple maintenance under CrPC 125 when civil suit pending**

**Use this judgment when several facts in your case are similar to following**

1. There is a civil case involving maintenance pending on same matter, say under family court
2. The pleadings in both cases are very similar
3. Same parties, same evidence in both cases, and similar relief asked for

[Ravindra Haribhau Karmarkar vs Mrs. Shaila Ravindra Karmarkar- Mumbai HC 1991](#)

### **Important parts of judgment**

16. Considering the facts and circumstances and the submissions made by the learned counsel for the parties, the relief in both the cases, being one and the same, and the Civil Court being seized with the matter, in the interest of justice, the proceeding pending in the court of J.M.F.C. Buldana, be stayed till the decision of the Reg. C.S. No. 277/86.

17. The non-applicants could not be allowed to ride two horses at a time (two simultaneous proceedings in two different Courts) and could not be permitted to continue the maintenance proceedings u/s. 125 of Cr.P.C. when they had already chosen the alternative remedy in Reg. C.S. No. 227/86. It is well settled law that the judgment of Civil Court shall prevail over the judgment of Criminal Court. The natural justice demands that parallel proceedings cannot be allowed to continue in different Courts.

# **Fresh application under DV Act dismissed when CrPC 125 maintenance already awarded**

## **Multiple maintenance under DV Act denied when CrPC 125 already decided**

**Use this judgment when several facts in your case are similar to following**

1. Wife had filed a CrPC 125 case earlier and got maintenance order under that
2. Wife filed another application under DV Act and asks for maintenance under that too
3. Secondary importance: One reason for asking maintenance in DV case is that previous maintenance award in earlier case is not enough

[Rachna Kathuria vs Ramesh Kathuria - Delhi HC 2010](#)

### **Important parts of judgment**

If a woman living separate from her husband had already filed a suit claiming maintenance and after adjudication maintenance has been determined by a competent court either in Civil Suit or by Court of MM in an application under Section 125 Cr.P.C. she does not have a right to claim additional maintenance under the Act. The Court of MM under the Act has power to grant maintenance and monetary reliefs on an interim basis in a fast track manner only in those cases where woman has not exercised her right of claiming maintenance either under Civil Court or under Section 125 Cr.P.C. If the woman has already moved Court and her right of maintenance has been adjudicated by a competent Civil Court or by a competent Court of MM under Section 125 Cr.P.C., for any enhancement of maintenance already granted, she will have to move the same Court and she cannot approach MM under the Protection of Women from Domestic Violence Act by way of an application of interim or final nature to grant additional maintenance. This petition is not maintainable and is hereby dismissed.

# **DV Act Maintenance application dismissed when CrPC 125 maintenance already awarded**

## **Maintenance application under DV Act dismissed when CrPC 125 maintenance already awarded**

**Use this judgment when several facts in your case are similar to following**

1. Wife already has got maintenance order under CrPC 125
2. She files a fresh case under DV Act and asks for maintenance in that too

[Multiple maintenance under DV Act denied when CrPC 125 already decided - Delhi HC 2010](#)

### **Important parts of judgment**

If a woman living separate from her husband had already filed a suit claiming maintenance and after adjudication maintenance has been determined by a competent court either in Civil Suit or by Court of MM in an application under Section 125 Cr.P.C. she does not have a right to claim additional maintenance under the Act. The Court of MM under the Act has power to grant maintenance and monetary reliefs on an interim basis in a fast track manner only in those cases where woman has not exercised her right of claiming maintenance either under Civil Court or under Section 125 Cr.P.C. If the woman has already moved Court and her right of maintenance has been adjudicated by a competent Civil Court or by a competent Court of MM under Section 125 Cr.P.C., for any enhancement of maintenance already granted, she will have to move the same Court and she cannot approach MM under the Protection of Women from Domestic Violence Act by way of an application of interim or final nature to grant additional maintenance. This petition is not maintainable and is hereby dismissed.

# **Ch 13. Judgments about arrears of maintenance, warrant, arrest, jail etc**

# Warrant arrest etc

## Arrears of maintenance Rs 69000, husband paid 50000 already, HC stays execution of warrant against husband

Use this judgment when several facts in your case are similar to following

1. *Warning:* not paying ordered maintenance purely because of emotional reasons like teaching wife a lesson etc is risky and not a recommended thing in my techniques of fighting cases.
2. If you have been in arrears of maintenance and a warrant has been issued which may lead to your arrest

[Birendra Prasad vs The State of Jharkhand - Jharkhand HC 2014](#)

### Important parts of judgment

That since Rs. 50,000/- has already been deposited by the petitioner as permanent alimony, thus the outstanding amount is Rs. 19,000/- after deduction of the amount of permanent alimony. That he is willing to deposit 50% of the remaining amount i.e. Rs. 10,000/- (ten thousand).

Since the petitioner has already deposited Rs. 50,000/- in the Court of Principal Judge Family Court, Daltonganj on 13.04.2010 (as per Annexure-2) and he is ready to deposit i.e. Rs. 10,000/- (ten thousand) by way of draft in the court below within two weeks, the court below shall stay the execution of the warrant against the petitioner.

I.A. No. 3776 of 2014 Issue notice to the O.P. No.2 under registered cover with A/D as well as under ordinary process, for which requisites etc. must be filed within one week in revision application as well as interlocutory application.

Till then, no coercive steps shall be taken against the petitioner in connection with M.P. Case No. 38 of 2009, pending in the Court of Principal Judge, Family Court, Palamau at Daltongaj.

Use this judgment when several facts in your case are similar to following

1. *Warning:* not paying ordered maintenance purely because of emotional reasons like teaching wife a lesson etc is risky and not a recommended thing in my techniques of fighting cases.
2. Maintenance arrears are there and fine levy warrant (CrPC 421) for attachment or sale issued
3. Warrant could not be executed and jail term under CrPC 125 is likely
4. You want to know about process of fine levy warrant and what happens if execution fails or succeeds, and how much jail term possible in CrPC 125

[Sethi Singh vs Jass Kaur And Anr - P&H HC 1990](#)

### Important parts of judgment

8. In the case in hand, the perusal of the file of the Executing Court shows that on 17.8.1985 and 27.10.1985, the bailiff attached to the Court of the Sub-Judge 1st Class, Dawali had gone to attach the property of the husband, but there was resistance and, therefore, he had to report that the attachment be made with the help of the police. It appears that during this period, the

husband alienated his entire property and, therefore, Smt. Jass Kaur filed an application to a similar effect and requested for issuing of conditional warrant for imprisonment of the husband and the order was passed on 19.4.1986. The impugned order of the Judicial Magistrate also reveals that the distress warrant for attachment and sale of the property of the defaulter remained unexecuted due to reasons beyond the control of the Court. Thus, the order of imprisonment of the defaulter under Section 125(3) of the Code appears to be well justifiable in the circumstances of the case. ...

Thus, the order of the Trial Court in sentencing the petitioner to imprisonment for one year and ten months is certainly illegal being violative of the above-referred mandate of the legislature contained in proviso (i) to Sub-section (3) of Section 125 of the Code. Consequently, the impugned order is partly set aside by accepting this petition to the extent that the petitioner would be liable to undergo imprisonment for one year only for arrears of maintenance allowance from 15.10.1983 to 14.10.1984.

# **Arrest for non-payment only within 1 year, but no time limit for recovery**

## **Arrest for non-payment has time limitation CrPC 125(3), but no time limit for recovery under CrPC 128**

CrPC 128 is another way for recovery of dues under CrPC 125. The bare act of CrPC 128 follows:

### **Section 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.

### **Use this judgment when several facts in your case are similar to following**

1. *Warning*: not paying ordered maintenance purely because of emotional reasons like teaching wife a lesson etc is risky and not a recommended thing in my techniques of fighting cases.
2. Maintenance under CrPC 125 to wife has been ordered and you haven't paid
3. Proceedings against you have been started under CrPC 128

[P.Vaithi vs Kanagavalli and Tamil Selvai - Madras HC 2010](#)

### **Important parts of judgment**

6. After an order is passed directing to pay maintenance, the party in whose favour such an order has been passed has got two options to work out to recover the arrears from the other. He can choose to approach the court under Section 125(3) Cr.P.C. requesting the court to punish the defaulter by imposing appropriate imprisonment. On the other hand, he can also approach the court under Section 128 of Cr.P.C. seeking to recover the amount due under the maintenance order. A comparison of Sections 125(3) and 128 of Cr.P.C. would keep things beyond any pale of doubt that in so far as the proceeding under Section 125(3) is concerned, the statute has prescribed a period of limitation of one year, whereas in respect of a proceeding under Section 128 of Cr.P.C., there is no limitation provided at all. This is because, while exercising the power under Section 125(3) Cr.P.C. the action being essentially a criminal in nature, resulting in punishment of imprisonment, the legislature has perhaps, thought it fit to provide such a period of limitation of one year to file a petition. Since, while enforcing an order under Section 128 of Cr.P.C. for recovery of the amount, there is no question of straight away imposing such a punishment of imprisonment and that may be the reason for the legislature not to provide for such a period of limitation. Therefore, to put it in nutshell, for initiating a proceeding for enforcing an order by invoking Section 128 of Cr.P.C., absolutely, I find no provision providing

for limitation as it is provided in respect of proceedings under Section 125(3) of Cr.P.C. In the case on hand, the petition was filed under Section 128 of Cr.P.C. Though it was filed beyond one year, in my considered opinion, the lower court was right in entertaining the same as the same is not barred by any limitation.

# **Ch 14. CrPC 125 maintenance denied judgments**

# Wife working, maintenance denied

## Desertion by wife, wife working, unable to prove husband's bad habits, maintenance denied

Use this judgment when several facts in your case are similar to following

1. Wife living separately without sufficient or reasonable cause
2. Wife unable to prove her allegations about bad habits of husband, for example alcoholism, gambling, adultery etc
3. Wife is working and has some income
4. Wife hasn't stated how she is unable to maintain herself from the income she has
5. Secondary importance: You can prove she is acting under influence of someone else (in this case her father)

[CrPC 125 No maintenance desertion - Archana Gupta vs Rajeev Gupta Uttarakhand HC 2009](#)

### Important parts of judgment

Learned trial Court, while deciding the issue no. 1, has recorded finding of fact that without any sufficient or reasonable cause wife is living separately. Wife has refused to join company of husband despite the fact that husband wanted her to live with him. It was further held by the learned trial court that wife is under the influence of her father and could not prove allegations of bad habits like consumption of alcohol, gambling and adultery against the husband. While deciding the issue nos. 2 and 3, learned trial Court declined to grant any maintenance to the wife on the basis of finding recorded in issue no. 1 and on the ground that wife is employed and getting Rs. 2200/- per month. However, learned trial Court granted Rs. 2000/- per month as maintenance for applicant no. 2, i.e. minor son.

...

Wife is entitled for maintenance from the husband under sub Section a (1) of Section 125 Cr.P.C., if she is unable to maintain herself. As per the admission made by the wife in the application under Section 125 CrPC and as per the finding recorded by the learned Principal Judge, Family Court, Dehradun, wife is employed in a school and getting salary of Rs. 2200/- per month. Revisionist/wife nowhere says that out of this amount of Rs. 2200/- she is unable to maintain herself. On this ground also revisionist is not entitled for any maintenance from the husband.

## Wife's income tax return show income, maintenance denied

Use this judgment when several facts in your case are similar to following

1. You have given some evidence of wife's income, especially income tax return
2. Wife makes vague denials about her working status and income

[Shakuntala vs Balendar Kumar Vyas - Delhi sessions court 2012](#)

### Important parts of judgment

5. The income tax returns of the assessment year 2004-05 which is in the name of the petitioner shows the income of the petitioner as 1,04,502. The income tax return of the assessment year 2005-06 which is in the name of the petitioner shows the income of the petitioner as 1,67,267. The petitioner has also alleged in her petition that she is acquired one plot adjacent to the plot in which the temple has been situated. The petitioner has not specifically denied the allegations of the respondent that she is running a Bhajan Mandli and she is the head of said Bhajan Mandli and that she is the co-owner of the House bearing No. F-207, Sudershan Park, Moti Nagar, Delhi.

Keeping in view these facts which are showing the financial position of the petitioner, I am of the opinion that the petitioner has failed to show that she is unable to maintain herself. Accordingly, I do not find any infirmity in the impugned order dated 15.03.12 passed by the trial court in case no. 705/04 of PS Moti Nagar and it is upheld. The revision petition is without any merits and it is dismissed. Nothing expressed herein shall tantamount to an opinion on the merits of the case.

# Wife qualified but non-working, maintenance denied

## Judgment Delhi court: No maintenance to qualified wife under 24 HMA

Use this judgment when several facts in your case are similar to following

1. Wife has good educational/professional qualification.
2. She was working before marriage. Your arguments will be stronger if she worked after marriage too.
3. She has filed for maintenance now claiming to have no income.

Note: Though below judgment is an HMA 24 judgment, it is given here to understand the principles behind awarding maintenance and how all judges are not thinking with same mindset. Also it is high time that we dispel the prevalent notion in mind of many lawyers, that once a wife files case under DV Act, award of some interim maintenance is a foregone conclusion. It is because of 'lazy' advice from such lawyers that many husbands believe that award of maintenance is a done deal and it can't be stopped.

[Neeraj Aggarwal vs Veeka Aggarwal - Delhi district court 2007](#)

### Important parts of judgment

5.. During the course of arguments it has not been denied by the Counsel for the applicant/ wife that the applicant/ wife herself is an engineer graduate in the field of Information Technology. Ld. Counsel for the applicant/ wife submitted that the applicant/ wife submitted that the applicant/ wife joined the job for some time after the marriage but thereafter due to the marital disputes she is not in a position to pursue her job and has left the same. In her entire application the applicant/ wife has nowhere stated that she is also an engineer graduate in the field of Information Technology and that she also joined the job after her marriage. Those seeking justice and equity from the Court must come to the court with clean hands. It seems that for obvious reasons and to extract money the applicant/ wife has not disclosed her true qualifications in the Court. The applicant/ wife is an engineer graduate and, therefore, can very well maintain herself and there is no need for her to depend upon the mercy of her parents or on the non-applicant/ husband. The purpose of Section 24 of H.M. Act is not to extract money from the other party and the court should not be a forum to extract the money or to blackmail the other party.

...

.. In the present case the applicant/ wife is a well qualified engineer and, therefore, there is no need for her to sit idle at home waiting for the maintenance from the non-applicant/ husband. In the peculiar facts and circumstances of the case since the applicant/ wife is well qualified and, therefore, can earn handsome amount by working and there is no need for her to be financially dependent upon her parents or on the non-applicant/ husband, she is not entitled for any maintenance. While hearing arguments on the application it was ordered that the maintenance shall be granted to the wife till the disposal of the petition. This sentence in order sheet dated 27.08.2007 only means that the wife is entitled for the maintenance from the date of filing of the application till the disposal of the main petition and not thereafter. It nowhere reflects that the wife shall be entitled to maintenance in every case come what may.

8.. Therefore, in view of the above said discussion, the application U/s 24 Hindu Marriage Act of the applicant/ wife is dismissed. There shall be no orders as to cost. File be consigned to Record Room.

**Qualified wife can't sit idle and claim maintenance: Mumbai family court**

**Use this judgment when several facts in your case are similar to following**

- 1. Wife has good qualifications or used to work earlier, but left work later
- 2. She now claims to have no income, and wants maintenance

[Qualified wife can't sit idle and claim maintenance: Mumbai family court](#)

**Important parts of judgment**

16. The learned counsel for respondent has argued that the petitioner is well qualified and she is earning an amount of Rs.50,000/?per month, she is having sufficient income for her maintenance. It is argued by the learned counsel for respondent that before the police station Worli on 12.11.2011 the petitioner has given statement u/s 161 of Cr.P.C. The petitioner has admitted that she has completed degree in Food and Science Nutrician, she had worked as a dietician, she is Post Graduate in Dietician field, she had also worked with Larcen and Tubro etc. but at present she is not working. The above statement made by the petitioner clearly shows that she is well qualified and able to do job. The respondent though submitted that she is having huge investment in crores of rupees but nothing is placed on record. It is clear from the statement of petitioner that petitioner is well qualified having capacity to earn. The Hon'ble Madhya Pradesh High Court in the case of "Mamta Jaiswal Vs. Rajesh Jaiswal held that well qualified wife is not entitled to remain as an idle and claim maintenance from her husband. In short, the wife is not entitled to advantage of her own wrong, she cannot harass the husband on the count of maintenance though she is capable to earn. In the present case in hand, the petitioner?wife is very qualified, she has worked with various companies. This admitted by herself, now she is claiming that she is a housewife, having no source of income. The wife who is well qualified and claiming maintenance by sitting idle is not entitled to get maintenance, secondly she herself has admitted that though her husband is connected with garment business but he has share worth rs.5,000/?only. Considering the above circumstances, it is clear that the wife is having good capacity to earn. According to respondent, she is earning but no any documentary evidence is on record that she is earning. Nothing is on record to prove the income of respondent at this primary stage. In such circumstances, in my view, at this juncture petitioner is not entitled to get maintenance. Hence I pass the following order :

ORDER 1. The application is rejected.

**Qualified woman asking for travel allowance for attendant denied, and severely castigated**

**Use this judgment when several facts in your case are similar to following**

- 1. Your wife is qualified enough to engage in work and get a job

2. She however does not work and does not attempt to find any work either

3. She claims maintenance under CrPC 125 or DV Act

Note: The judgment below is actually for HMA 24, but it has been cited by family court, Mumbai to deny maintenance to qualified wife (previous judgment). It has been cited in many judgments over the years, so most judges will be aware of it and will not be able to ignore it.

*Comment:* The revision petition was filed by wife to claim travel expenses for one adult attendant to accompany her on court hearings on a divorce case filed by husband. It was denied. However the comments of the court regarding qualified women wanting to work and claim maintenance – has made this judgment a quite popular one and it gets cited in many judgments after it.

[Mamta Jaiswal vs Rajesh Jaiswal - MP HC 2000](#)

### **Important parts of judgment**

6. In view of this, the question arises as to in what way Section 24 of the Act has to be interpreted. Whether a spouse who has capacity of earning but chooses to remain idle, should be permitted to saddle other spouse with his or her expenditure ? Whether such spouse should be permitted to get pendente life alimony at higher rate from other spouse in such condition ? According to me, Section 24 has been enacted for the purpose of providing a monetary assistance to such spouse who is incapable of supporting himself or herself in spite of sincere efforts made by him or herself. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente life alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversory by implementing the provisions of law suitable to their purpose. In the present case Mamta Jaiswal is a well qualified woman possessing qualification like M. Sc. M.C. M.Ed. Till 1994 she was serving in Gulamnabi Azad Education College. It impliedly means that she was possessing sufficient experience. How such a lady can remain without service ? It really puts a big question which is to be answered by Mamta Jaiswal with sufficient cogent and believable evidence by proving that in spite of sufficient efforts made by her, she was not able to get service and, therefore, she is unable to support herself. A lady who is fighting matrimonial petition filed for divorce, can not be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her. The case may be vice-versa also. If a husband well qualified, sufficient enough to earn, sits idle and puts his burden on the wife and waits for a 'dole' to be awarded by remaining entangled in litigation. That is also not permissible. The law does not help indolents as well idles so also does not want an army of self made lazy idles. Everyone has to earn for the purpose of maintenance of himself or herself, atleast, has to make sincere efforts in that direction. If this criteria is not applied, if this attitude is not adopted, there would be a tendency growing amongst such litigants to prolong such litigation and to milk out the adversory who happens to be a spouse, once dear but far away after an emerging of litigation. If such army is permitted to remain in existence, there would be no sincere efforts of amicable settlements because the lazy

spouse would be very happy to fight and frustrate the efforts of amicable settlement because he would be reaping the money in the nature of pendente lite alimony, and would prefer to be happy in remaining idle and not bothering himself or herself for any activity to support and maintain himself or herself. That can not be treated to be aim, goal of Section 24. It is indirectly against healthiness of the society. It has enacted for needy persons who in spite of sincere efforts and sufficient efforts are unable to support and maintain themselves and are required to fight out the litigation jeopardising their hard earned income by toiling working hours.

...

9. In the present case the husband has not challenged the order. Therefore, no variation or modification in it is necessary though this revision petition stands dismissed.

Few other judgments where qualified wife has been denied maintenance are given below:

[Delhi Mahila court denies maintenance to doctor wife from doctor husband](#)

[Delhi sessions court denies woman maintenance on grounds that she was capable of working and without child](#)

In recent judgment below, wife has been given maintenance of 10,000 per year but for a limited time of 1 year after which it will stop. She is expected to find a job within a year and take care of herself.

[Delhi sessions court asks woman to find job within a year, grants maintenance](#)

# Wife not working, denied on grounds of desertion

## Desertion by wife, husband has good evidence against wife's allegations, maintenance denied - SC 2003

Use this judgment when several facts in your case are similar to following

1. Wife unable to show any demand of dowry etc as alleged
2. Husband able to show positive moments in married life at times of alleged ill-treatment by wife
3. Wife educated, didn't report about ill-treatment to others

[Deb Narayan Halder vs Anushree Halder SC 2003](#)

### Important parts of judgment

We are, therefore, satisfied that the Trial Court properly appreciated the evidence on record while recording the finding that there was never any demand for dowry by the appellant. There was, therefore, no reason for him to ill-treat his wife for this reason. We, therefore, find that both the reasons given in the application for her ill treatment are non-existent. We have also perused the evidence on record with a view to ascertain whether for any other reason the respondent was ill treated by the appellant. We have found from the evidence on record that the behaviour of the appellant has been throughout normal. It is admitted by the parties that they frequently went during vacations to visit different places. On some occasions they were even accompanied by the relatives of the respondent. The appellant permitted the respondent to continue her studies even after her marriage and that is how she secured her B.A. degree after marriage. He also arranged an agency of the UTI to keep her engaged and also opened a joint account in a bank which she could operate. All these facts go to indicate that for several years after their marriage they enjoyed normal marital relationship. In fact, there is evidence to show that the appellant used to praise his wife in the presence of others by complimenting her and giving her credit for the good performance of their son in his studies. This even the respondent has admitted in the course of her deposition. Apart from these we find it difficult to believe that if the appellant started torturing the respondent within 15 days of the marriage, the respondent would not have reported this matter at least to her mother. According to her mother, she came to know about her ill treatment 5 to 6 years after marriage. According to the respondent in her complaint Ex. 1 she had mentioned about such happenings to her mother about eight years after her marriage. While there is reference to reports lodged by the respondent to the police regarding torture by the appellant, not one such report has been brought on record which may have been lodged before the respondent left her matrimonial home. Even relevant particulars are not disclosed. The only police report brought on record is one lodged after the respondent left her matrimonial home. We do not attach much importance to this report. There is no contemporaneous document in the form of letters which may have been written by the respondent to her friends or relatives mentioning about her being subjected to torture or harassment by the appellant. The respondent being an educated lady, it is difficult to believe that she would not have written letters to her friends and relatives during the twelve years that she lived with the appellant as husband and wife. Apart from her mother, the respondent has produced no evidence of prove that she was tortured and harassed by the appellant. T

## **Desertion by wife, no reasons for desertion, maintenance denied - P&H HC 2008**

**Use this judgment when several facts in your case are similar to following**

1. Wife left on her own
2. She initiated divorce petition etc
3. She never approached police or anyone about alleged bad behaviour of husband
4. She did not give good evidence about why she is living separately from husband

[Harjeet Kaur vs Bhupinder Singh on 30 April, 2007](#)

### **Important parts of judgment**

10. It is a fact that respondent is not living with petitioner since September 1988, that means for the last 19 years the parties are living separately. The respondent herself filed divorce petition for dissolving the marriage of the parties which was withdrawn later on by her. She filed one petition for maintenance for herself and another petition for maintenance of the daughter. The respondent has not shown any reasonable cause to live separately at Ambala. There is nothing on record that respondent ever approached the lawful authorities against the alleged ill treatment of husband. The residence of the respondent after marriage is with the petitioner. She has not placed unimpeachable evidence on record to support her separate living. On the basis of material on record and conduct of the respondent, it is clear that respondent has no intention to live with the petitioner and to continue the matrimonial tie. The petitioner has proved desertion and the respondent has failed to prove any just and reasonable cause to live separately. She has levelled bald allegations against the petitioner which has not been proved. The learned District Judge has appreciated the evidence in its right perspective.

...

20. The other matter is this. Once desertion, as defined earlier, is established there is no obligation on the deserted husband (taking the case where he is the deserted spouse) to appeal to the deserting spouse to change her mind, and the circumstance that the deserted husband makes no effort to take steps to effect a reconciliation with the wife does not debar him from obtaining the relief of judicial separation, for once desertion is proved the deserting spouse, so long as she evinces no sincere intention to effect a reconciliation and return to the matrimonial home, is presumed to continue in desertion.

## **Wife staying apart, her own father's testimony against her, divorce based on cruelty to husband, maintenance denied**

**Use this judgment when several facts in your case are similar to following**

1. Wife refused to stay with husband's joint family
2. Wife does socially strange/unacceptable behaviour (in this case staying at divorced maternal uncle's place with her child too)
3. Wife's allegations and arguments are vague with no specific dates etc of harassment

4. A family member of wife deposes with evidence not favourable to her regarding her reason for staying separate (in this case her father)

[Meena Dinesh Parmar vs Dinesh Hastimal Parmar Mumbai HC 2005](#)

### **Important parts of judgment**

We have noted that the wife took the contention that she was willing to stay in a joint family. If this be so, then one of the main reason for acrimony between the parties would not exist and there was no reason for her not to return to her husband. We find that she has contended that she was harassed and ill-treated by the petitioner and his family members. Her contentions in this regard are vague. There is no date mentioned in respect of any particular incident of harassment. So also particulars of harassments are also not given. She had stated that she was never provided with any medical aid during her pregnancy. Apart from her bare statement, there is nothing on record to substantiate this contention. It is noted that she had gone to her parents place at Borivali for delivery however, within two days she left for her uncle's place at Pune. In the police enquiry her own father had given a statement that his consent and permission was not taken for leaving his house at Borivali. We find no justification in the contention of the wife for staying at Pune with her maternal uncle, even though her husband had purchased a separate place for their exclusive residence. Such an act on her part of staying at Pune alongwith her newly born son does amount to both cruelty as well as desertion and no fault can be found in the impugned judgment and order granting divorce on the ground of cruelty and desertion.

6. So far as question of maintenance is concerned, in view of our aforesaid finding, maintenance cannot be granted to the wife.

# Wife working but lied on oath, file perjury CrPC 340

## CrPC 125 wife lied, perjury under CrPC 340 - Jagdish\_Prasad\_vs\_State\_&\_Ors Delhi HC 2008

Use this judgment when several facts in your case are similar to following

1. Wife was working and had income
2. She lied on oath in court about her working status
3. File perjury under CrPC 340 for criminal prosecution

[Jagdish\\_Prasad\\_vs\\_State\\_&\\_Ors 2008 Delhi HC](#)

### Important parts of judgment

4. On 12th February 2004, Respondent No.2 was examined in chief in the maintenance petition. She stated: "I was not working anywhere after my marriage, I was not working till today anywhere from the date when I CrI.M.C.1130/08 Page 2 of 11 was kicked out from my matrimonial home." She was cross examined on 7th April 2004 and was asked whether she was doing any job during the pendency of the petition. She replied that "since after coming to my parental home, I am not doing any job. I have one bank account in Co- operative Bank. It is incorrect to suggest that after coming to my parental home, I have worked with Tirath Ram Shah Charitable Hospital, Rajpur Road, Delhi." In response to another specific question whether she was holding a bank account at Punjab National Bank, Civil Lines she stated as under: "It is wrong to suggest that I am holding an account which is 427791 in the above said bank i.e., PNB"

5. Consequent upon the above replies in cross examination, the Petitioner filed an application under Section 340 CrPC seeking the prosecution of the Petitioner for committing perjury punishable under Section 193 CrPC.

6. It appears that a reply was filed to the said petition by Respondent No.2. Even evidence appears to have been led by examining the officials from both the Punjab National Bank as well as the Tirath Ram Shah Charitable Hospital.

# **Ch 15. DV Act, procedures to follow before maintenance order**

# Interim maintenance and reliefs only after summary trial in DV case

## Interim relief under DV Act cannot be granted without conducting inquiry as per CrPC summons case

Use this judgment when several facts in your case are similar to following

1. If you have received summons/notice under DV Act, then file your statement/objection and use this judgment to make sure that orders for relief are passed only after your evidence is taken up by court.
2. Then even to grant interim relief to the applicant (wife), the court must conduct an inquiry as would be required in a CrPC summary trial, that is, summons case. This means that husband will be allowed to give his basic evidence etc and any order will be passed only after that.

[KRISHNAMURTHY NOOKULA vs SAVITHA Y - Karnataka HC 2009](#)

### Important parts of judgment

Note: the judgment is only in PDF scanned image format, so you can download it from here:

<http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/500665/2/CRLRP815-09-09-12-2009.pdf>

*Comment:* The order in above judgment was based on reading of Section 23 and Section 28 of PWDVA given below. Sec 23 (2) allows the grant of ex-parte order based on affidavit of petitioner.

Section 28(1) clearly says that all proceedings under DV Act will be as per Code of Criminal Procedure (CrPC). It also allows the court to lay down its own procedure but only for sub-section 23(2) which relates to grant of ex-parte order. So court cannot create its own procedure for grant of relief if notice to respondent/husband is already issued.

So if you have received a notice under DV Act, then file your statement/objection and use this judgment to make sure that orders for relief are passed only after your evidence is taken up by court.

In Karnataka, this judgment has to be followed by all the lower courts. In other states, it is not mandatory but this judgment can be shown as a precedent of another high court to get similar relief.

### 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.

### Section 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.

# No monetary relief under Sec 20 until domestic violence proved

## No monetary relief under Section 20 of DV Act (PWDVA) unless domestic violence proved - Mumbai HC

Use this judgment when several facts in your case are similar to following

1. Monetary relief under Section 20 of DV Act has been claimed by wife.
2. During trial of DV case, no domestic violence was proven as per court orders
3. Still the court granted monetary relief to wife

Note: In this judgment, the monetary relief has been denied to children, not wife. However, the principle of law invoked here would be applicable to wives too.

[Koushik Gharami vs Sangeeta Koushik Gharami - Mumbai HC](#)

### Important parts of judgment

3. A short question that arises for determination in present writ petition is, as to whether the minor children of the aggrieved person are entitled for maintenance under Section 20 of the Protection of Women from Domestic Violence Act, 2005 if the trial Magistrate has come to a conclusion that the domestic violence has not been proved.

...

10. In my considered opinion, the learned Magistrate had committed an error in granting monetary relief to respondent Nos. 2 and 3 despite the fact that domestic violence could not be established. Though it is possible to say that the maintenance was permissible for respondent Nos. 2 and 3 (minor children) under Section 125 of the Code of Criminal Procedure, the monetary reliefs could not have been given to them under Section 20 of the Protection of Women from Domestic Violence Act, 2005. The view taken by the learned Magistrate and the appellate Court, in my opinion, is not correct and hence, I pass the following order.

i. The writ petition is allowed.

ii. The order passed by learned Magistrate in Misc. Criminal Case No. 27 of 2011 on 12 March, 2013 and the order passed by the learned Sessions Judge, Gadchiroli in Criminal Appeal No. 14 of 2013 on 9th December, 2013 are set aside.

iii. The amount of Rs. Twenty Five Thousand, deposited by the petitioner in this Court shall be refunded to him immediately.

The petition stands disposed of accordingly.

# DV petition dismissed because of prima-facie no domestic violence

## DV petition dismissed because of prima-facie no domestic violence

Use this judgment when several facts in your case are similar to following

1. Not much evidence given of domestic violence by wife

[Sonia versus Vinod - Delhi MM 2007](#)

*Comment:* This is a trial court judgment in Delhi MM court. Though the judgment is favourable to husband and his family, the order doesn't have many reasons given except saying that prima-facie there was no domestic violence. Since protection officer was present with applicant woman and DIR (domestic incidence report) was also filed, I was hoping judge would have given the points with reference to points mentioned in the DIR. However, the judgment doesn't contain details as to what were the loopholes in the DIR. Nevertheless, the point of including this judgment is that one should not assume that courts will blindly go in favour of woman. Unexpected dismissal order can also be passed in favour of husband – one should stick to the stand as seemingly the respondents in this case have done.

### Important parts of judgment

7. I have perused the entire judicial file minutely in view of the above mentioned rival submissions. I have also taken into consideration the view points of the Protection Officer and the Domestic Incident Report submitted by her before this court.

8. On the basis of entire facts and circumstances of this case, I am prima facie of the considered opinion that behaviour of applicant is of such a nature that she is not co- operating with the respondents. She prima facie appears to be harassing the respondents on trivial matters. The applicant has prima facie failed to satisfy this court that respondent No.1 or any of his other family members have really committed any Domestic Violence against her in the given facts and circumstances of this case. The applicant prima facie appears to be residing at present with her parents without any justified reasons. Her in-laws are very much in need of her company and support because all the three sisters and one brother of respondent No.1 are unmarried at present and prima facie depending upon the earnings of respondent No.1 and the mother of respondent No.1 appears to be quite old and physically weak in health. She also needs the services of her daughter-in-law namely, applicant for her own care and protection.

# **Ch 16. DV Act maintenance denied judgments**

# **Working wife, stopped work before filing DV case**

**Wife was making 50K p.m., resigned on her own giving lame excuses, maintenance denied to her**

**Use this judgment when several facts in your case are similar to following**

1. Wife used to work earlier
2. She stopped working and filed for maintenance under DV Act
3. She hasn't given good reasons why she had stopped to work

Note: Husband will get even more benefit from this judgment if wife's job was high paying. Courts are not very happy if women who are earning high incomes stop work and claim maintenance without good reason on why they had stopped working.

[Damanpreet Kaur vs Indermeet Juneja & Anr. - Delhi HC 2012](#)

## **Important parts of judgment**

4. The relieving letter placed on record by the petitioner is dated 17.08.2010. As per this relieving letter the date of joining of the petitioner with Met Life was 07.01.2008 and her designation at the time of leaving the company was Assistant Manager (Service Delivery). She has been relieved pursuant to her resignation letter dated 17.06.2010. This letter is not accompanied by the resignation letter of the petitioner giving the reasons for her resignation or the policy of the company to shift her to Bangalore. It is relevant to mention here that while the date of joining of petitioner with Met Life Insurance is 07.01.2008, the petitioner has given birth to a female child on 18.09.2008 i.e. in the same year and despite having infant child to take care, she has served the company till she was relieved on 17.08.2010.

5. The contention of petitioner is that in order to comply with the order of the Court to allow the respondent to have visitation right she could not shift to Bangalore. There is nothing on record to indicate that at any point of time despite continuous litigation going on between the parties she had approached the Court for modification of the order regarding visitation right. If the petitioner of her own prefers to resign, she cannot take shelter under the Court order regarding visitation right. With the passage of time the child has grown up and is of school going age. Thus, it is more convenient for a working mother to be in the job then to sit at home.

6. The learned ASJ has rightly declined the interim monetary relief to the petitioner by holding that she was well educated lady earning Rs.50,000/- per month and had chosen not to work of her own will though had the capacity to work and find a suitable job for herself.

# Wife qualified but non-working, maintenance denied

## Wife qualified like husband (MBA), interim maintenance denied in PWDVA

Use this judgment when several facts in your case are similar to following

1. Wife has similar qualifications to yours, especially high qualifications like MBA, MBBS etc
2. She claims to be not working, demands maintenance
3. No children
4. Husband can prove he lost job to deal with false cases filed by wife

[Sanjay Bhardwaj vs State Delhi HC 2010](#)

### Important parts of judgment

No law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not. Court cannot tell the husband that he should beg, borrow or steal but give maintenance to the wife, more so when the husband and wife are almost equally qualified and almost equally capable of earning and both of them claimed to be gainfully employed before marriage. If the husband was BSc. and Masters in Marketing Management from Pondicherry University, the wife was MA (English) & MBA. If the husband was working as a Manager abroad, the wife with MBA degree was also working in an MNC in India. Under these circumstances, fixing of maintenance by the Court without there being even a prima facie proof of the husband being employed in India and with clear proof of the fact that the passport of the husband was seized, he was not permitted to leave country, (the bail was given with a condition that he shall keep visiting Investigating Officer as and when called) is contrary to law and not warranted under provisions of Domestic Violence Act.

## Qualified MBBS wife asked to do some work - Justice S N Dhingra, Delhi HC

Use this judgment when several facts in your case are similar to following

1. Wife has good qualification but not working
2. She has got maintenance already in another case
3. She applied for increase in maintenance amount

[KAVITA PRASAD vs RAM ASHRAY PRASAD - Delhi HC 2008](#)

*Comment:* it is not clear from judgment as to what was the other case, whether HMA 24 in which she was getting maintenance. Nevertheless, this can be a useful precedent to cite to make sure the wife cannot increase her maintenance amount for whatever reasons. Also, making her work honorary will frustrate her plans to sit at home and enjoy the maintenance amount and the litigation. She would probably think it's better to end litigation rather than spending full time on honorary work which doesn't pay her anything!

### Important parts of judgment

The petitioner who is an MBBS qualified Doctor and admittedly had been in practice before,

claims that she was sitting at home despite being a qualified Doctor and does not work. The petitioner claimed maintenance against her husband who is in service. The Trial Court granted maintenance of Rs.4,000/- per month. This petition is made against observation of the Trial Court that she was working somewhere and earning around Rs.8,000 to 10,000/- PM and that the maintenance granted by the Trial Court was made subject to adjustment of the maintenance being received by her under Section 125. Since counsel for the petitioner states that petitioner is not working anywhere, despite being a qualified Doctor, I consider that as she is receiving maintenance from husband, the Court should not allow her experience and qualification to go waste. I consider that she should be directed to work as a honorary Doctor in some public welfare institute or school free of charges where she can take care of health of the poor people. Let her come to Court and give an undertaking that she was prepared to work without charging anything in any institution named by this Court around her house minimum 5 hours a day and 6 days a week, so long she receives maintenance from her husband on the plea of being unemployed.

# **Domestic violence not proved, maintenance application dismissed**

## **Domestic violence not proven, maintenance application dismissed**

**Use this judgment when several facts in your case are similar to following**

1. Domestic violence allegations of wife were not proven

[No monetary relief under Section 20 of DV Act \(PWDVA\) unless domestic violence proved - Mumbai HC 2014](#)

### **Important parts of judgment**

10. In my considered opinion, the learned Magistrate had committed an error in granting monetary relief to respondent Nos. 2 and 3 despite the fact that domestic violence could not be established. Though it is possible to say that the maintenance was permissible for respondent Nos. 2 and 3 (minor children) under Section 125 of the Code of Criminal Procedure, the monetary reliefs could not have been given to them under Section 20 of the Protection of Women from Domestic Violence Act, 2005. The view taken by the learned Magistrate and the appellate Court, in my opinion, is not correct and hence, I pass the following order.

# **Ch 17. Other DV Act judgments**

# Wife not entitled to her father-in-law residence under DV Act

## Wife not entitled to stay in or claim her father-in-law's house using DV Act

Use this judgment when several facts in your case are similar to following

1. Wife has forcibly occupied and living in a house which belongs to your father or mother, and is wholly their self-acquired property
2. That house was never a [shared household under DV Act](#).
3. She has filed a DV case claiming that house to be shared household and her right to residence in that house under section 19 of DV Act.

[SUDHA MISHRA vs SURYA CHANDRA MISHRA - Delhi HC 2014](#)

### Important parts of judgment

Daughter-in-law cannot assert her rights, if any, in the property of her parents-in-law wherein her husband has no right, title or interest. She cannot continue to live in such a house of her parents-in-law against their consent and wishes. In my view, even an adult son or daughter has no legal right to occupy the self acquired property of the parents; against their consent and wishes. A son or daughter if permitted to live in the house occupies the same as a gratuitous licensee and if such license is revoked, he has to vacate the said property.

14. In this case, overwhelming evidence was produced before the trial court by the respondent that he was the owner of the suit property which was his self acquired property. No evidence has come on record to suggest that the said property was purchased from the joint family funds and the husband of appellant had any share therein, during the life of his father. It has also come on record that husband of appellant is not residing in the suit property along with the appellant. In her affidavit by way of evidence, appellant has deposed that she is residing separately from her husband in one room at the ground floor. No cogent evidence was produced before the trial court nor any such finding has been returned by the trial court that husband of appellant is living in the suit property. Since suit property is self acquired property of the respondent, appellant has no right to continue to occupy the same against the wishes of respondent.

Above judgment of Delhi HC has been upheld by supreme court also.

[Supreme Court denies Delhi woman a claim on in-laws' property](#)

# Ch 18. Final thoughts

# Evil of unjustified maintenance, parasitism, men's rights

In India, the divorce rate in marriages is probably only 1%, so unlike other countries like US with 50% divorce rates in first marriages, we are not a divorce country.

However, the problem being faced today by many men in marriages is that they will tend to get reduced to a second-class status in their own homes, if they simply oblige with the new regime of so called women empowerment, under which more and more laws to favour women are being passed. DV Act is a prime example of such a law. If a man is aware of how the DV Act can be (mis)used by women, he may just keep quiet and compromise with whatever oppression he is facing at home at the hands of his wife.

What many Indian husbands are going through is something which has happened in US about hundred years back in history. [An excellent article on AVFM](#) tells how even in 1920s and 1930s in US, many people, both men and women, vociferously wrote against the persecution befalling upon men due to the 'alimony racket' being run by many wives.

In 1925 Doris Blake, widely read syndicated newspaper columnist, devoted a column to Judge Strong's views, summing up her own view by calling alimony grafters a "parasitic class." In 1928 bestselling novelist Faith Baldwin, had this to say:

"The rising tide of divorce has brought us a new industry, the ultimate refinement of gold-digging, the perfection of blackmail within the law - marriage for alimony. Women who do not want husbands or children have found a joker in our marriage laws by which they can establish themselves comfortably for life; free, respectable, rich, safe - without personal cost or sacrifice.

There are thousands and thousands of women who are being supported by men to whom they are no longer wives. There is no doubt that this business of alimony is getting to be a serious menace, it may be alright when a man has plenty of money. To pay a former wife a few thousand dollars in alimony may mean nothing to him. But, on the other hand, just consider how many men are forced to pay alimony who cannot afford it. You will find in the majority of cases that there is no good reason why they should pay it, either. The women are well able to take care of themselves. If they did not lack pride and self-respect, they would not accept money from men who no longer mean anything to them."

Journalist Ruth Brown Reed in 1931 spoke of an "industry":

The alimony racket has become the great woman's industry. A sobbing pretty woman before the court - and what chance has the husband? In many cases the amount of alimony is so large in proportion to the man's earnings that it completely nullifies any chance of happiness or of another marriage. And why - one cannot help but ask - should a divorced man be denied the right to a normal family life?

One could read this today and nod their heads in total agreement, as to what is happening in Indian courts today, and all this is being done with the noble ideas of protecting women and women empowerment.

Maintenance regime in India as it is right now has become nothing but a way to grant a comfortable and parasitic status to unscrupulous women. Indeed, it is being reported many a time that a husband caught an affair of his wife, and his wife promptly filed cases on him under DV Act, IPC 498A etc, to keep him busy running in courts and also claim maintenance from him, where none was her rightful due since it was she who was at fault.

Which is why men's rights activists have to focus even more on changing the maintenance laws and this parasitism promoting maintenance regime. It will go a long way in creating a better framework of laws for the next generation. Otherwise there is a real danger that we may contribute towards creating a corrupt society in future, where there is no real incentive to excel, instead people spend effort on trying to find legal loopholes and live as a parasite on others' efforts.

## **Comments and Feedback welcome!**

The book has many more words now than I had initially thought would be enough to cover this topic. At the same time, I feel there is scope for including more relevant judgments on maintenance as and when they become available. Since this book is published in an eBook form so it will not be too difficult to update it and release the updates to readers. I will continue to update the book as and when there are substantial number of changes.

Readers are welcome to give their feedback about the book at [Men Rights India Contact Form](#), whether something was up to expectations or not. Especially if you think there is an important judgment not covered yet in this book, or if you have found any error, feel free to email me using above form and I will try to include it in the next update.

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# Appendix A: CrPC 125

Section 125 in The Code Of Criminal Procedure, 1973

125. Order for maintenance of wives, children and parents.

(1) If any person leaving 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, 1975 (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 comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case be, remaining unpaid after the execution of the warrant, to imprisonment

for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance from her husband under this section she is living in adultery, or if, without any sufficient reason, if 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.

# Appendix B: PWDVA

The Protection of Women From Domestic Violence Act, 2005

1. Short title, extent and commencement.-

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

[No. 43 OF 2005]

[September 13, 2005]

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:-

Prefatory Note-Statement of Objects and Reasons.-Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.

---

1. Received the assent of the President on September 13, 2005 and published in the Gazette of India Extra, Part II, section 1 dated 14th September 2005, pp. 1-12, No. 49

(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.

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.

### 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.

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.

#### 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. Counseling.-

(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 counseling 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 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.

(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 is 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 this Act shall be enforceable throughout India.

#### Section 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.

#### 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 Magistrates 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 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.

# Appendix C: PWDVA Rules, 2006

In exercise of the powers conferred by section 37 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005), the Central Government hereby makes the following rules, namely:-

## 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 at least 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 information 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 1 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 the contents thereof.

(4) The affidavit to be filed under sub-section (2) of 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.-

(1) 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 or any other provision of the Act or the rules made there under;

(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;

(vi) 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 scrutinize 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 to the concerned Magistrate;
- (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 incidence of domestic violence;
- (xiii) to liaise between the aggrieved person or persons, polices 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 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 a 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 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 at least 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 counseling 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 authorized 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;

(3) 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.

(4) 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 notice 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 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 notices 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 notices 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 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 Counselors.-

(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 Counselors 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 or any other suit or proceedings connected therewith.

(3) The Counselors shall as far as possible be women.

14. Procedure to be followed by Counselors.- (1) The Counselor shall work under the general supervision of the court or the Protection Officer or both.

(2) The Counselor shall convene a meeting at a place convenient to the aggrieved person or both

the parties.

(3) The factors warranting counseling shall include the factor that the respondent shall furnish an undertaking that he would refrain from causing such domestic violence as 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 counseling proceedings before the counselor or as permissibly by law or order of a court of competent jurisdiction.

(4) The Counselor shall conduct the counseling proceedings bearing in mind that that the counseling 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 counseling the fact that and any justification for the alleged act of domestic violence in counseling the fact that and any justification for the act of domestic violence by the respondent is not allowed to be a part of the Counseling proceeding should be made known to the respondent, before the proceeding begin.

(6) The respondent shall furnish an undertaking to the Counselor 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 counseling proceedings before the Counselor.

(7) If the aggrieved person so desires, the Counselor shall make efforts of arriving at a settlement of the matter.

(8) The limited scope of the efforts of the Counselor 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 Counselor 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 counseling and reformulating the terms for the settlement, wherever required.

(10) The Counselor 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 domestic violence to the satisfaction of the aggrieved person and in making such an effort the Counselor shall give due regard to the wishes and sensibilities of the aggrieved person.

(11) The Counselor shall submit his report to the Magistrate as expeditiously as possible for appropriate action.

(12) In the event the Counselor 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 inquiry from the parties and after, recording reasons 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 counseling, 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 counseling proceedings, the Counselor 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 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 Orders.- (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 under 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 medical facility in writing, clearly stating that the application is being made under.

(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.

# Appendix D: Family Courts Act, 1984

THE FAMILY COURTS ACT, 1984

(No.66 of 1984)

[14th September, 1984]

An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. Be it enacted by Parliament in the Thirty-fifth Year of the Republic of India as follows:

## CHAPTER I - PRELIMINARY

1. Short title, extent and commencement . -

1) This Act may be called the Family Courts Act, 1984.

(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, and different dates may be appointed for different States.

2. Definitions. - In this Act, unless the context otherwise requires, a. "Judge" means the Judge or, as the case may be, the Principal Judge, Additional Principal Judge or other Judge of a Family Court; b. "notification" means a notification published in the Official Gazette; c. "prescribed" means prescribed by rules made under this Act; d. "Family Court" means a Family Court established under Sec.3; e. all other words and expressions used but not defined in this Act and defined in the Code of Civil Procedure, 1908(5 of 1908), shall have the meanings respectively assigned to them in that Code.

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## CHAPTER II FAMILY COURTS

(3) Establishment of Family Courts. -(1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government after consultation with the High Court, and by notification,-

a. shall, as soon as may be after the commencement of this Act, establish for the State comprising a city or town whose population exceeds one million, a Court;

b. may establish Family Courts for such other areas in the State as it may deem fit.

(2) The State Government shall, after consultation with the High Court specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits.

4.Appointment of Judges.

(1) The State Government may, with the concurrence of the High

**Court appoint one or more persons to be the Judge or Judges, of a Family Court.**

**(2) When a Family Court consists of more than one Judge-**

- a. each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;
- b. the State Government may, with the concurrence of the High Court, appoint any one or more Judges to be the Principal Judge and any other Judge to be the Additional Principal Judge;
- c. the Principal Judge may, from time to time, make such arrangements as he may think fit for the distribution of the business of the Court among the various Judges to whom he may refer cases;
- d. the Additional Principal Judge may exercise the powers of the Principal Judge in the event of any vacancy in the office of the Principal Judge or when the Principal Judge is unable to discharge his functions owing to absence, illness or any other cause.

**(3) A person shall not be qualified for appointment as a Judge unless he-**

- a. has for at least seven years held a Judicial office in India or the office of a Magistrate or tribunal or any post under the Union or a State requiring special knowledge and experience;
- b. has for at least seven years been an advocate of a High Court or of two or more Courts in succession; or
- c. Possesses such other qualification as the Central Government may, with the concurrence of the Chief Justice of India, prescribe.

**(4) In selecting persons for appointment as Judges-**

- a. every endeavour shall be made to ensure that persons committed to the need to maintain and preserve that institution of marriage and to promote the welfare of children are qualified by reason of their experience and expertise to promote the settlement of family disputes by conciliation and counseling are selected; and
- b. preference shall be given to women.

**(5) No person shall be appointed as or hold the office of, a Judge of a Family Court after he has attained the age of sixty-two years.**

**(6) No salary or honorarium and other allowances payable to, and the other terms and conditions of service of, a Judge shall be such as the State Government may, in consultation with the High Court, prescribe.**

**5.Association of social welfare agencies, etc. -The State Government may, in consultation with the High Court, provide. by rules, for the association, in such manner and for such purposes and subject to such conditions as may be specified in the rules, with a Family Court of-**

- a. institutions or organisations engaged in social welfare or the representation of the interests of the family;
- b. persons professionally engaged in promoting the welfare of the family;
- c. persons working in the field of social welfare; and
- d. any other person whose association with a Family Court would enable it to exercise its jurisdiction more effectively in accordance with the purposes of this Act.

## 6. Counsellors, officers and other employees of Family Courts. -

### (1) The State Government

shall, in consultation with the High Court, determine the number and categories of counsellors, officers and other employees required to assist a Family Court in the discharge of its functions and provide the Family Court with such counsellors, officers and other employees as it may think fit.

(2) The terms and conditions of association of the counsellors and the terms and conditions of service of the officers and other employees. referred to in sub-section (1), shall be such as may be specified by rules made by the State Government.

## CHAPTER III - JURISDICTION

### 7. Jurisdiction. - (1) Subject to the other provisions of this Act, a Family Court shall-

- a. have and exercise all the jurisdiction exercisable by any district Court or Civil Court under any law for the time being in force in respect of suits and the nature referred to in the Explanation; and
- b. be deemed, for the purposes of exercising such jurisdiction under such law, district Court or, as the case may be. such subordinate Civil Court for the the jurisdiction of the Family Court extends.

**Explanation -**The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely:

- a. a suit or proceeding between the parties to a marriage for decree of a null (declaring the marriage to be null and void or, as the case may be, annullin marriage) or restitution of conjugal rights or judicial separation or dissol
- b. a suit or proceeding for a declaration as to the validity of a marriage or matrimonial status of any person;
- c. a suit or proceeding between the parties to a marriage with respect to the parties or of either of them;
- d. a suit or proceeding for an order or injunction in circumstances arising ou relationship;
- e. a suit or proceeding for a declaration as to the legitimacy of any person;
- f. a suit or proceeding for maintenance;
- g. a suit or proceeding in relation to the guardianship of the person or the c access to, any minor.

### (2) Subject to the other provisions of this Act a Family Court shall also have and exercise;

- a. the jurisdiction exercisable by a Magistrate of the first class under Chapt order for maintenance of wife, children and parents) of the Code of Criminal 1973 (2 of 1974); and
- b. such other jurisdiction as may be conferred on it by any other enactment

### 8. Exclusion of jurisdiction and pending proceedings. -Where a Family Court has been established

for any area:

a. no district Court or any subordinate Civil Court referred to in sub-section (1) of Sec. 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

b. no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

c. every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of Sec. 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973(2 of 1974)-

( i ) which is pending immediately before the establishment or such Family Court before district Court or subordinate Court referred to in that sub-section or, as the case may be, before any Magistrate under the said Code; and

( ii ) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act has come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established;

#### CHAPTER IV - PROCEDURE

9. Duty of Family Court to make efforts for settlement. -(1) In every suit or proceeding, endeavour shall be made by Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties. the Family Court may adjourn the proceedings for such period, as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court. to adjourn the proceedings.

10. Procedure generally. -(1) Subject to the other provisions of this Act and rules, the provisions of the Code of Civil Procedure, 1908(5 of 1908), and of any other law for the time being in force shall apply to the suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973(2 of 1974), before a Family Court and for the purpose of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), or the rules made thereunder, shall apply to the proceedings under Chapter IX of the Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

11. Proceedings to be held in camera. -In every suit or proceedings to which the Act applies, the proceedings may be held in camera if the Family Court so desires and shall be so held if either

party so desires.

12. Assistance of medical and welfare experts. -In every suit or proceedings, it shall be open to a Family Court to secure the services of a medical expert or such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purposes of assisting the Family Court in discharging the functions imposed by this Act.

13. Right to legal representation. -Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right to be represented by a legal practitioner: Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as *amicus curiae*.

14. Application of Indian Evidence Act, 1872. -A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).

15. Record of oral evidence. -In suit or proceedings, before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judges as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the witness and the Judge and shall form part of the record.

16. Evidence of formal character on affidavit. -

(1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court.

(2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.

17. Judgment. - Judgment of a Family Court shall contain a concise statement of the case, the point for determination, the decision thereon and the reasons for such decision.

18. Execution of decrees and orders. -

(1) A decree or an order (other than an order under Chapter IX of the Code of Criminal Procedure, 1973, (2 of 1974), passed by a Family Court shall have the same force and effect as a decree or order of a Civil Court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908), for the execution of decrees and orders.

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure 1973, (2 of 1974), shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary Civil Court to which it is sent for execution.

#### CHAPTER V - APPEALS AND REVISIONS

19. Appeal. -

(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of

Civil Procedure, 1908(5 of 1908), or in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order of a Family Court to the High Court both on facts and on law. (2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), before the commencement of the Family Courts (Amendment) Act, 1991.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, order or decree of a Family Court.

(6) An appeal referred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.

#### CHAPTER VI - MISCELLANEOUS

20. Act to have overriding effect. -The provisions of this Act shall] have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

21. Power of High Court to make rules. -(1) The High Court may, by notification in the Official Gazette, make such rules as it may deem necessary 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. normal working hours of Family Courts and holding of sittings of Family Courts on holidays and outside normal working hours;
- b. holding of sittings of Family Courts at places other than the ordinary place;
- c. efforts which may be made by, and the procedure which may be followed by, a Family Court for assisting and persuading parties to arrive at a settlement.

22. Power of the Central Government to make rules. -(1) The Central Government may, with the concurrence of the Chief Justice of India, by notification, make rules prescribing the other qualifications for appointment of a Judge referred to in Cl.(c) of sub-section (3) of Sec.4.

(2) Every rule made under this Act by the Central Government 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 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.

23. Power of the State Government to make rules. -

(1) The State Government may, after consultation with the High Court, by notification make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may provide for all or any of the following matters, namely:

- a. the salary or honorarium and other allowances payable to, and the terms and conditions of service of Judges under sub-section (6) of Sec. 4;
- b. the terms and conditions of association of counsellors and the terms and conditions of service of the officers and other employees referred to in Sec. 6;
- c. payment of fees and expenses (including travelling expenses) of medical and experts and other persons referred to in Sec. 12 out of the revenues of the Government and the scales of such fees and expenses;
- d. payment of fees and expenses to legal practitioners appointed under Sec. 13 curiae out of the revenues of the State Government and the scales of such fees and expenses;
- e. any other matter which is, required to be, or may be, prescribed or provided for by or under any law for the time being in force in the State.

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