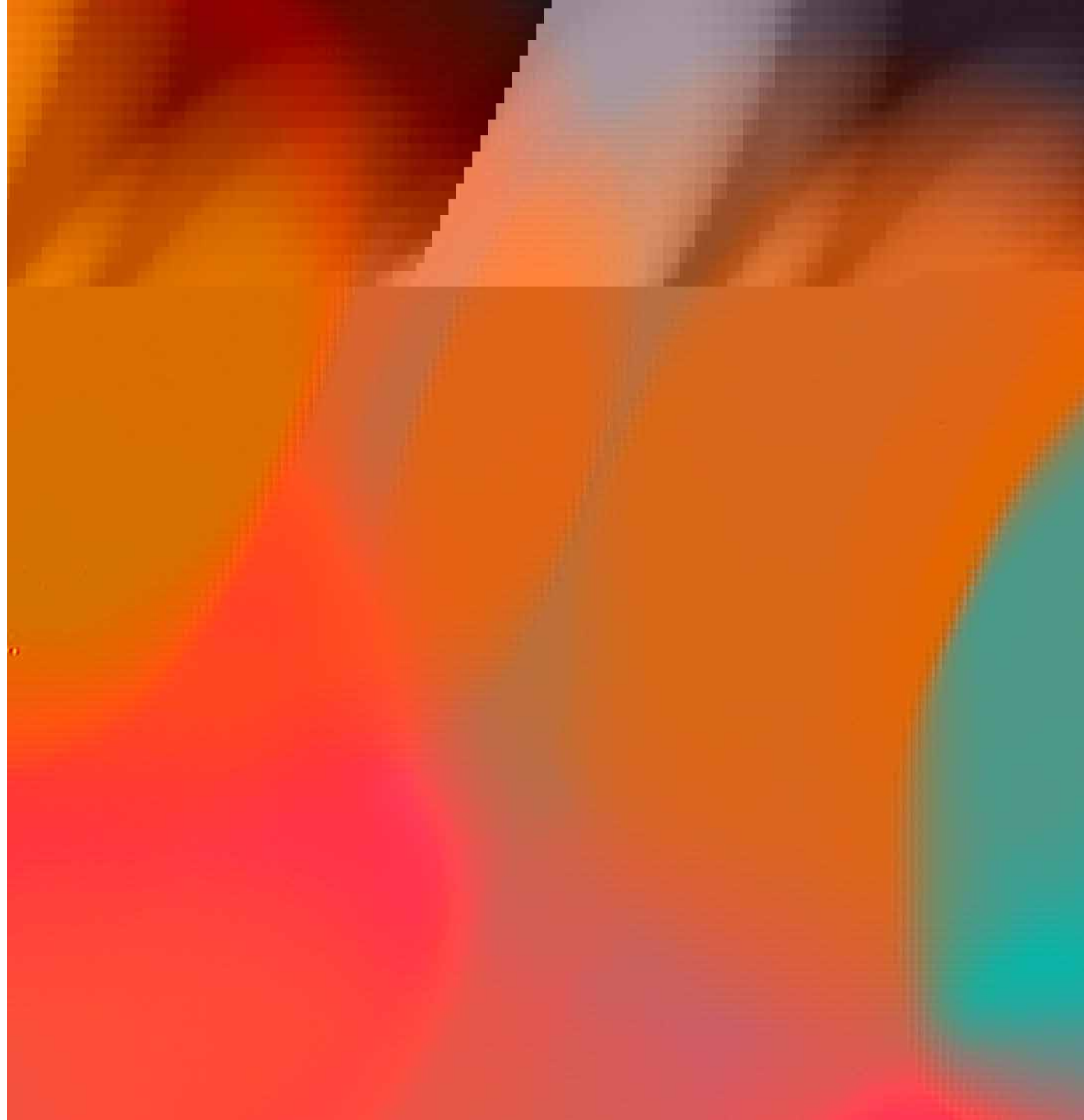


Session 2:

Maintenance/Alimony: Determination and Execution of the order granting maintenance

Presentation by: Balaji Srinivasan, Advocate
on Record, Supreme Court of India.



Maintenance Proceedings

Object, Purpose, Burden, and Test to be applied by Courts



Object of Maintenance Proceedings

- Per the Hon'ble Supreme Court, **the object of the maintenance proceedings 'is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support.**
- The phrase “unable to maintain herself” in the instant case would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow’ (**Para. 6** of *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316)

Section 125 CrPC/Section 144 BNSS is meant to achieve a 'social' purpose:

- Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal* [(1978) 4 SCC 70] falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India.
- **It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves (Para. 6 of *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316).**

Burden of proof

- Under the law the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself.
- These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife.
- It has to be established that the wife was unable to maintain herself (**Para. 7 of *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316).**

Applicable test to determine if maintenance order should be granted by the Court

- The test, to be applied by the court, is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband (**Para. 8** of *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316).

Speedy Disposal of maintenance cases:

- In *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353, the Family Court concerned came under the Supreme Court's lens since it permitted the husband to take numerous adjournments, and on certain occasions, dealt with the matter showing total laxity (**Para. 16).****The wife had sustained herself in that state for a staggering period of nine (9) years!**
- In such a circumstance, the Hon'ble Supreme Court found no error in the High Court granting maintenance from the date of the application.
- **The Hon'ble Supreme Court had also reiterated that under a Section 125 CrPC proceeding, it must be remembered (*by a Family Court*), is of a summary nature** and are intended to enable destitute wives and children, the latter whether they are legitimate or otherwise, to get maintenance in a speedy manner (**Para. 7** of *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353)

Approaches suggested by the Hon'ble Supreme Court

- In *Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353, the Hon'ble Supreme Court laid down some prescriptions on the approach to be adopted:
- A Family Court Judge should remember that the procrastination is the greatest assassin of the *//s* before it. It not only gives rise to more family problems but also gradually builds unthinkable and Everestine bitterness. It leads to the cold refrigeration of the hidden feelings, if still left.
- The delineation of the *//s* by the Family Judge must reveal the awareness and balance. Dilatory tactics by any of the parties has to be sternly dealt with, for the Family Court Judge has to be alive to the fact that the *//s* before him pertains to emotional fragmentation and delay can feed it to grow.

Maintenance – wife's right to live with dignity

From when to be granted and
enforcement mechanisms



Wife's right to live with dignity

- The Hon'ble Supreme Court in *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705, held that it is the obligation of the husband to maintain his wife. A husband cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning (**Para. 17**)
- **As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar.**
- There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife.

Bald Excuses Put Forth by Husband to be Ignored

- Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law.
- If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right. (Para. 14 of *Shamima Farooqui v. Shahid Khan*, (2015) 5 SCC 705)

Landmark judgment of *Rajneesh v. Neha*, (2021) 2 SCC 324

- Since the delay in adjudicating maintenance claims continued unabated by Courts, the Hon'ble Supreme Court in *Rajneesh v. Neha*, reported in (2021) 2 SCC 324, issued binding directions (**under Article 142 of the Constitution of India**) to bring about uniformity and consistency in the orders passed by all courts, by directing that *maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant* (Para. 113 and Para. 131).

Enforcement of orders of maintenance

- The Hon'ble Supreme Court in *Rajneesh v. Neha*, specified enforcement mechanism of maintenance orders. An application for execution of an order of maintenance can be filed under the following provisions (**Para. 115**):
- Section 28-A of the Hindu Marriage Act, 1955 read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an order passed under Section 24 of the Hindu Marriage Act (before the Family Court);
- Section 20(6) of the DV Act (before the Judicial Magistrate); and
- Section 128 CrPC before the Magistrate's Court.
- Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with the CPC/CrPC (**Para. 116**).
- Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier (**Para. 117**).



New Developments

Decisions of the Hon'ble Supreme
Court

New Developments – as laid down by the Hon'ble Supreme Court

- The Hon'ble Supreme Court in **Shahjahan v. State of U.P., [2025 INSC 528]** applied the direction laid down in *Rajneesh* (supra), and awarded maintenance to the appellant and children from the date of filing of the maintenance petitions before the Family Court concerned (**Para. 18**).
- In ***Deepa Joshi v. Gaurav Joshi*, [2026 INSC 370]**, the Hon'ble Supreme Court placed its reliance on the decisions of *Chaturbhuj* (supra), *Shamima Farooqui* (supra), and *Rajneesh* (supra), to rule that maintenance must be fair, reasonable and commensurate with the status of the parties and the financial capacity of the husband. Accordingly, deductions arising out of financial commitments such as loan repayments, focused on asset creation, cannot be portrayed as necessary expenditure to reduce the maintenance liability. The liability of to maintain a spouse is a primary obligation and cannot be subordinated to such financial arrangements (**Paras 13, 15 and 16**).

Thank you for a patient hearing!